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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1993

VAUGHN KILLEEN, MIKE ROBERTS AND ADA COUNTY, IDAHO,

Petitioners,

v.

SUE HALLSTROM,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Two questions are presented:

1. The broad question presented, which this Court left unanswered in *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.32 (1982), is what constitutes "clearly established law" for purposes of qualified immunity in a civil rights action brought pursuant to 42 U.S.C. § 1983. The question of what constitutes clearly established law typically involves a situation where the defendant asserts there was no clearly established law governing his/her conduct. Here, the converse is true. The defendant asserting qualified immunity acted in accordance with three local United States District Court decisions which specifically sanctioned the conduct. The Ninth Circuit Panel, however, refused to consider the local United States District Court precedent and held that it would only consider Ninth Circuit Court of Appeals and Supreme Court precedent. Thus, the narrow question presented is: whether local United States District Court decisions which a defendant cites as controlling should be considered in determining if the law is clearly established when qualified immunity is asserted.

2. Whether the legal analysis employed by the panel in denying qualified immunity is consistent with this Court's recent decisions in *Anderson v. Creighton*, 483 U.S. 635 (1987), and *Hunter v. Bryant*, 502 U.S. ___, 116 L.Ed.2d 589, 112 S.Ct. ___ (1991).

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

The parties to the proceedings in the United States Court of Appeals for the Ninth Circuit, the Order of which is here for review, were:

1. Petitioners Vaughn Killeen, Mike Roberts and Ada County, Idaho, Appellees in the Court of Appeals;

2. Sue Hallstrom, Appellant in the Court of Appeals;

3. City of Garden City, Idaho, Randy W. Snapp, and Sgt. Thurston, Appellees in the Court of Appeals; and

4. Robert C. Hallstrom, Appellant in the Court of Appeals.

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Pursuant to Part III of the Supreme Court Rules, Vaughn Killeen, Mike Roberts, and Ada County, Idaho petition this Court to issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Ninth Circuit denying the petition for rehearing and rejecting the suggestion for rehearing en banc is attached as Appendix A hereto. The Panel Opinion which among other things reversed summary judgment on the issue of qualified immunity is attached as Appendix B hereto. The United States District Court for the District of Idaho's Judgment and Order granting Defendants' Motion for Summary Judgment, which among other things granted qualified immunity, are attached as Appendices C and D, respectively, hereto.

JURISDICTION

The Court of Appeals entered its Order denying the petition for rehearing and rejecting the suggestion for rehearing en banc on June 23, 1993. This Petition for a Writ of Certiorari is therefore timely under Sup. Ct. R. 13.1 and 13.4. This Court has jurisdiction to review the Order of the Court of Appeals under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FOURTEENTH AMENDMENT

. . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law. . . .

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit and equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Factual Background

This case arises out of the arrest and detention of Sue Hallstrom ("Hallstrom") on June 19, 1987. Hallstrom was arrested by law enforcement officers, who are not parties to this petition, for several motor vehicle violations and resisting and obstructing an officer. She was taken to a County jail facility owned and operated by Petitioner Ada County. Petitioner Vaughn Killeen ("Killeen") was the Ada County Sheriff and Petitioner Mike Roberts ("Roberts") was the captain in charge of the Ada County Jail.

Once at the jail Hallstrom refused to submit to the standard booking process. She refused to provide biographical information, be finger printed, or submit to having her photograph taken. Her refusal was premised upon her belief that her first "allegiance is to Higher Moral Law, and any other allegiance is secondary." Hallstrom was placed in a cell and advised dozens of times that she would be released from the jail if she would submit to booking procedures. She refused until June 24, 1987 at which time she submitted to the booking process and was released.

Hallstrom was not the first person who refused standard booking procedures at the Ada County Jail based upon their "inalienable right to not submit to man-made law." Just a few years before Hallstrom was incarcerated, in three separate incidents, three other individuals who had been arrested and brought to the Ada County Jail, were detained when they refused to be booked. Each of them filed lawsuits in the United States District Court for

the District of Idaho. In each case the lawsuits were dismissed on the basis that the plaintiffs did not have a legal basis to resist booking procedures and they failed to state a legal claim against Ada County or its officials for detaining them until they submitted to the booking process. Copies of the Orders granting Ada County or its officials' motions to dismiss or for summary judgment are attached as Appendices E, F and G hereto.

Course of Proceedings

Hallstrom sued under 42 U.S.C. § 1983 alleging numerous constitutional violations, including under the Fourth and Fourteenth Amendments, for detaining her until she submitted to booking. Petitioners Killeen, Roberts and Ada County filed an Answer to Hallstrom's Complaint asserting a number of affirmative defenses including that Roberts had qualified immunity in his individual capacity. Killeen, Roberts and Ada County then filed a Motion for Summary Judgment on all issues raised by Hallstrom's Complaint.

The United States District Court granted the motion in its entirety. In so doing, consistent with its earlier decisions, the Court held that Roberts justifiably detained Hallstrom until she booked and that he was entitled to qualified immunity therefor. Appendix D, pp. 18-19 and 21-25.

Hallstrom appealed. The Ninth Circuit Panel reversed the District Court on the issue of qualified immunity. While the Panel recognized " . . . government

has a legitimate interest in orderly booking . . . ," (Appendix B, pages 22 n.20 and 31) it held that the District Court had not properly decided the qualified immunity issue. It rejected the three District Court cases which had sanctioned Roberts' conduct on the basis the decisions did not constitute "clearly established law." Instead, the Panel held that the "objective reasonableness" standard of qualified immunity required the Court to look only to Ninth Circuit and Supreme Court precedent. According to the Panel: "Under the objective test, an official is charged with knowledge of controlling Supreme Court and Ninth Circuit precedent." Appendix B, p. 26.

After rejecting the use of District Court precedent, the Panel reversed Roberts' summary judgment on the qualified immunity issue on the basis that Hallstrom's Fourth Amendment constitutional right to be taken immediately before a magistrate had been violated. Appendix B, p. 27. The Panel remanded the case " . . . for the award of compensatory damages . . . ", and a " . . . determination as to whether any county official sued in his individual capacity is liable for punitive damages." Appendix B, p. 27.

ARGUMENT FOR ALLOWANCE OF WRIT

This Petition should be granted for two reasons. First, this Court should decide what law is to be considered in determining what is "clearly established law" for purposes of qualified immunity in a § 1983 action. This Court has previously left the question open which has resulted in conflicts within and among the Circuit Courts of Appeal.

Second, this Court should consider whether the Ninth Circuit Panel's legal analysis is consistent with this Court's precedents which instruct that the law to be considered in determining whether a right has been violated must be particularized. The Panel, in reversing summary judgment on qualified immunity, did not cite and apparently did not locate *any cases* which address the narrow question whether Roberts could detain Hallstrom until she submitted to booking. Rather, contrary to this Court's decision in *Anderson, supra,* the Panel looked to law on the broader issue of the right to be taken immediately before a magistrate. In so doing, it not only disregarded *Anderson;* it also failed to recognize the appropriate inquiry: " . . . whether the [law enforcement officer] acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be constructed five years after the fact." *Hunter, supra,* 116 L.Ed.2d at 596. Thus, this case falls squarely within the criteria of Sup. Ct. R. 10.1(a) and (c).

I.

THE NINTH CIRCUIT PANEL ERRED WHEN IN DETERMINING CLEARLY ESTABLISHED LAW IT REJECTED APPLICABLE LOCAL UNITED STATES DISTRICT COURT PRECEDENT.

This Court has expressly left open the question of what constitutes clearly established law. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 n.32 (1982). As a result of the question having been left open, there is a conflict within and among the Circuit Courts of Appeal. *Cf.*, Nahmod S., *Civil Rights and Civil Liberties Litigation* § 8.07 (3d ed. 1991); Kinports, K., 23 *Georgia Law Review* 597, 605 n.41 (Spring 1989); Blum, K., 26 *Indiana Law Review* 187, 199-205 (1993); and Gildin, G., 11 *Hofstra Law Review* 557, 591-592 (Winter 1983). Some circuits have taken the position that only Supreme Court and Courts of Appeal decisions will be considered. Some have held that even Circuit Court of Appeal decisions from other circuits will not be considered. Other circuits have held that "all available decisional law" will be considered. Blum, K., 26 *Indiana Law Review* 187, 203-204 (1993). Even within the Ninth Circuit Court of Appeals, different panels have taken different approaches. Unlike the Panel in this case which refused to consider District Court opinions, another Ninth Circuit panel in *Romero v. Kitsap County*, 931 F.2d 624, 629 (9th Cir. 1991) held United States District Court precedent should be considered.

Even though this Court in *Harlow* left open the question what law should be considered clearly established law, it has in fact utilized United States District Court decisions in determining whether there was clearly established law. In *Procunier v. Navarette*, 434 U.S. 555 (1978)

the Court noted that no matter whether Supreme Court, Court of Appeals or "local district court" opinions were utilized the particular rights asserted to have been violated had not been recognized. Further, in *Mitchell v. Forsyth*, 472 U.S. 511 (1985) the Court examined a number of district court cases to determine the " . . . legitimacy of warrantless national security wiretapping. . . . " *Id.* at 533.

This Court's utilization of United States District Court cases to determine clearly established law is consistent with the purposes supporting qualified immunity. As this Court has noted on numerous occasions, utilizing the "clearly established law" standard allows government officials to know when their conduct may subject them to liability. *Cf., Anderson, supra*, at 641. It would be inconsistent with that purpose to ask government officials to disregard existing United States District Court cases which specifically sanction their conduct.

The importance, for these Petitioners, of utilizing local District Court precedent is apparent. The very issue raised by Hallstrom had been addressed by the local United States District Court less than two years before Hallstrom's incarceration. The district court judge specifically sanctioned detaining the Plaintiff until she agreed to be booked.

> However, the booking procedures utilized by Ada County and the methods used to enforce those procedures are not unconstitutional. There is no question that the right to counsel does not arise as early as the time of booking. *See United States v. Gouveia*, ___ U.S. ___, 81 L.Ed.2d 146 (1984). Nor does "incommunicado incarceration" of a person who refuses to comply with

> booking procedures constitute a violation of either substantive or procedural due process under the fourteenth amendment. Booking procedures are necessary to the effective management and administration of a detention facility. *Incarcerating a person until such time as they comply with booking procedures is a reasonable measure to ensure a legitimate government objective is achieved. It is not unreasonable nor unconstitutional for jailers to require that pretrial detainees comply with booking procedures. Similarly, it is not unreasonable for the jailers to incarcerate a person who might otherwise be able to post bail subsequent to booking, as a means of coercing that person into compliance with the booking procedures.*

Appendix G, pp. 78-79 (emphasis added).

The same issue was presented to another United States District Court judge in Idaho, again less than two years before Hallstrom's detention. That judge also held that it was not unconstitutional for Ada County to detain an inmate until the inmate submitted to standard booking procedures. Appendix F. Finally, the same issue was addressed again in December of 1985 with the same result. Appendix E.

Thus, when Roberts was confronted with Hallstrom's arbitrary refusal to submit to standard booking procedures, the decision to detain her was not made in a vacuum. It was made upon existing law. His conduct had specifically been approved three times by the United States District Court for the District of Idaho not more than two years before. It is untenable for the Ninth Circuit Panel to disregard those decisions in deciding that

Roberts did not have qualified immunity. For these compelling reasons, this Court should grant the Petition and issue a Writ of Certiorari to decide, the question it has left open, what law is to be considered in determining clearly established law.

II.

THE NINTH CIRCUIT PANEL ERRED IN ITS LEGAL ANALYSIS IN DETERMINING WHETHER ROBERTS WAS ENTITLED TO QUALIFIED IMMUNITY.

Despite this Court's decisions in *Anderson* and *Hunter*, the Ninth Circuit Panel utilized a broad "level of generality" in determining whether there was clearly established law and misapplied the objective reasonableness standard.

In *Anderson* this Court noted that the level of generality utilized in determining clearly established law can drastically effect the inquiry. It rejected a broad inquiry as bearing "no relationship to the 'objective legal reasonableness' that is the touchstone of *Harlow*." *Id.* at 639. Thus, this Court held:

> . . . the right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.

at 640.

The Ninth Circuit Panel over-generalized the clearly established law inquiry. Rather than focusing on the more

particularized issue of Hallstrom's "right" to not submit to the booking process versus Ada County's right to detain her until she did submit, the Panel examined the more general Fourth Amendment right to be taken promptly before a magistrate.[1] The Panel in defining the issue as broadly as it did essentially converted the rule of qualified immunity " . . . into a rule of virtually unqualified liability simply by [identifying] violation of extremely abstract rights." *Anderson, supra,* at 639. A proper analysis of the issue, a more particularized one, would yield the result reached by the District Court: Hallstrom did not have a constitutional right to refuse booking and her detention until she agreed to booking did not violate her clearly established rights.

As problematic as the Panel's approach is to defining Hallstrom's rights, so is its approach to defining the actions of a reasonable officer. This Court summarily rejected a Ninth Circuit Panel's approach to that issue in *Hunter*. There, this Court held:

> . . . The court should ask whether the agents acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be constructed five years after the fact.

Id., 116 L.Ed.2d at 596.

Here, the Panel in reviewing Roberts' actions did not ask whether he "acted reasonably under settled law in

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[1] Ironically, Hallstrom acknowledged in her brief to the Ninth Circuit that her right to be taken before a magistrate was not even an issue to be decided. The Panel took it upon itself to frame the issue.

the circumstances." Instead, the Panel asked whether another reasonable interpretation could be constructed. For instance, the Panel said there were other options, including booking Hallstrom after a probable cause determination, doing a partial booking, or a "Doe booking." Appendix B, p. 21. If the Panel had followed this Court's instruction in *Hunter* to judge Roberts' actions against reasonably settled law, it would have found no law supporting Hallstrom's position that she had an inalienable right not to be booked; would have found no law clearly establishing that Hallstrom could not be detained until she booked; and would have found no law advising Roberts that he may be subjected to compensatory damages and punitive damages for requiring Hallstrom to be booked.

Because the Panel's Order is inconsistent with this Court's decisions in *Anderson* and *Hunter*, this Court should grant the Petition and issue a Writ of Certiorari.

CONCLUSION

This Court should grant this Petition and issue a Writ of Certiorari for the reasons set forth herein.

Respectfully submitted this 20 day of September, 1993.

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUE HALLSTROM; ROBERT HALLSTROM, Plaintiffs-Appellants, v. CITY OF GARDEN CITY; RANDY W. SNAPP; SGT THURSTON; VAUGHN KILLEEN; Sheriff; MIKE ROBERTS, et al. Defendants-Appellees.	No. 91-35662 DC# CV-87-01360-HLR ORDER (Filed June 23, 1993)

Before: WRIGHT, FLETCHER and CANBY, Circuit Judges

The panel as constituted in the above case has voted to deny the petition for rehearing.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN HALLSTROM; ROBERT HALLSTROM, *Plaintiffs-Appellants,* v. CITY OF GARDEN CITY; RANDY W. SNAPP; SGT. THURSTON; VAUGHN KILLEEN, SHERIFF; MIKE ROBERTS, ET AL., *Defendants-Appellees.*	No. 91-35662 D.C. No. CV-87-01360-HLR OPINION

Appeal from the United States District Court
for the District of Idaho
Harold L. Ryan, District Judge, Presiding

Submitted September 15, 1992*
Seattle, Washington

Filed April 12, 1993

Before: Eugene A. Wright, Betty B. Fletcher and William C. Canby, Jr., Circuit Judges.

Opinion by Judge Fletcher

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* The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); Ninth Circuit Rule 34-4.

SUMMARY

Individual Rights/Constitutional Rights

The court of appeals reversed in part a judgment of the district court. The court held that delaying a detainee's appearance before an available magistrate for more than three days because she refused to cooperate with established booking procedures and incarcerating her for the same reason for two additional days following the court's order that she be released on bail was a violation of her civil rights.

Appellant Susan Hallstrom was stopped on a Friday morning by a police officer of appellee City of Garden City, Idaho, for a broken taillight on her vehicle. She refused to show her driver's license. Driving without a license is a misdemeanor in Idaho. Hallstrom was arrested at approximately 9:00 a.m. for failure to furnish satisfactory evidence of her identity and transported to appellee Ada County's jail. Hallstrom requested presentation to a magistrate and refused to answer routine booking questions or to permit fingerprinting or photographing, asserting that such questions and procedures violated her constitutional rights. A magistrate was on call around the clock in the county, and the magistrate's office was in the same building as the county jail. Hallstrom's identity was ascertained from papers found in her possession. She was charged with obstruction of justice for her failure to cooperate. She was then incarcerated until such time as she would agree to submit to booking procedures. She was arraigned at approximately 4:00 p.m. on Monday before a state court judge who

ordered her released on bail. On that day, Hallstrom's husband attempted to post bail, but it was not accepted, and he was told that it would not be accepted until Hallstrom submitted to the booking process. It was the policy of the county not to take a prisoner before a magistrate, and not to release an arrested individual, until booking was accomplished. Hallstrom's husband obtained a court order requiring her to comply with booking procedures. Hallstrom then did so. She was released on bail late Wednesday afternoon.

Hallstrom filed a Section 1983 action, naming Ada County, its sheriff in his official capacity, and its jail commander in his official and individual capacities, as well as the City and its arresting police officers. Hallstrom alleged, among other things, that her right to be timely taken before a magistrate was violated, that her detainment after the court ordered her released on bail amounted to false imprisonment, and that the conditions of her confinement amounted to punishment and were otherwise unconstitutional. The defendants moved for summary judgment, which the district court granted. The court also held that qualified immunity was appropriate for the Ada County jail commander in his individual capacity.

[1] The officers had a constitutional duty to take Hallstrom before a judicial officer promptly after her arrest. A judicial determination of probable cause within 48 hours of arrest will generally comply with this promptness requirement. [2] After the lapse of 48 hours, the burden shifts to the government to justify the delay on the basis of a bona fide emergency or other extraordinary circumstances. [3] The county made no showing of

justification for the delay other than as a coercive measure to force her cooperation with the booking procedures. [4] Refusal to cooperate with booking procedures cannot excuse extended detention based solely on the arresting officer's assessment of probable cause. Four days of incarceration was not a brief period. Hallstrom was in custody for a prolonged period. Booking may not serve as a threshold condition which can indefinitely suspend the operation of the Fourth Amendment until it is met. [5] On the record, Hallstrom established the liability of Ada County, the sheriff in his official capacity, and the jail commander in dual capacities.

[6] The jail commander's qualified immunity depends upon whether a reasonable officer could have believed his conduct was lawful under governing law which was clearly established. No objectively reasonable official could consider a four-day incarceration to be brief, or Hallstrom's arraignment to be prompt, or the purpose of coercing compliance with booking procedures to be sufficiently exigent to justify the delay. [7] The Ada County jail commander was not shielded by qualified immunity in his individual capacity. [8] The defendants could not constitutionally coerce Hallstrom through continued confinement to comply with booking procedures after the court had ordered her released on bail.

[9] A pretrial detainee who has had only a judicial determination of probable cause may be subjected to the restrictions and conditions of a detention facility as long as they do not amount to punishment or are otherwise unconstitutional. [10] Hallstrom was entitled at least to the protections afforded pretrial detainees. [11] The detention itself, or lack of access to a magistrate, or denial

of release on bail, could have been punishment for Hallstrom's failure to cooperate. [12] Whether or not Hallstrom established constitutional deprivations in connection with the conditions of her confinement, her claims were cognizable and not appropriate for summary disposition.

COUNSEL

Robert C. Hallstrom, Susan Hallstrom, Boise, Idaho, pro se, for the plaintiffs-appellants.

James J. Davis, Davis, Wright, Tremaine, Boise, Idaho, and John L. King, Cantrill, Skinner, Sullivan & King, Boise, Idaho, for the defendants-appellees.

OPINION

FLETCHER, Circuit Judge:

Susan and Robert Hallstrom appeal the dismissal on summary judgment of their 42 U.S.C. § 1983 action. They describe themselves as self-taught "legalists" active and vocal in defending their constitutional rights. They claim violations of their rights stemming from the conduct of Ada County, Garden City, and each governmental entity's officers during the arrest of Mr. Hallstrom in March 1982 and the arrest and incarceration of Mrs. Hallstrom in June 1987. They also challenge the constitutionality of Idaho Code § 18-705 (1987), which prohibits obstruction of justice. They seek declaratory, injunctive, and monetary relief, including exemplary damages. The district court

granted summary judgment for defendants, and denied summary judgment to plaintiffs, finding that Mr. and Mrs. Hallstrom were not deprived of any constitutional rights. We have jurisdiction pursuant to 28 U.S.C. § 1291. Because we find that Susan Hallstrom's right to be taken before a magistrate in a timely fashion was violated, that she was detained unjustifiably after a judge ordered her released on bail, and that she raises cognizable constitutional claims with respect to her conditions of confinement, we reverse in part and affirm in part.

I. PROCEDURAL HISTORY

The Hallstroms filed a complaint naming the City of Garden City, the arresting Garden City police officers, Ada County, the Ada County Sheriff and Jail Commander, the State of Idaho, the City of Boise, and other unknown "Doe" officials as defendants. The Garden City police officers were sued in their official and individual capacities, as was the Ada County Jail Commander; the sheriff was sued only in his official capacity. The City of Boise filed a motion for judgment on the pleadings in which the State of Idaho joined. Garden City and the Garden City police officers filed a motion to dismiss. The district court granted the motion for judgment on the pleadings and dismissed the City of Boise and the State of Idaho. The court initially denied the dismissal of the Garden City defendants, but did dismiss the punitive damages claims against Garden City. The Hallstroms do not appeal these determinations. The Garden City defendants and the Ada County defendants then separately filed motions for summary judgment. The Hallstroms filed a cross-motion for summary judgment against Ada

County and its officials seeking declaratory relief only. They did not file any motion with respect to the Garden City defendants. The district court granted summary judgment for the Garden City and Ada County defendants against the Hallstroms, denied the plaintiffs' cross-motion, and entered a separate judgment dismissing the action as to all defendants including the "Does." Before reaching the issues raised by the Hallstroms or considering the principal defenses of defendants, the court decided three subsidiary issues. First, it found that the Hallstrom's state law claims were barred by failure to comply with the procedural requirements of the Idaho Tort Claims Act, thus entitling the Ada County defendants to dismissal of all state claims. Second, it determined that the Ada County Jail Commander was shielded by a qualified immunity defense with respect to his individual liability.[1] And third, it dismissed the punitive damages claim against Ada County. On appeal, the Hallstroms seek reversal of the district court's summary judgment in its entirety.

II. FACTS

Mr. Hallstrom was arrested in 1982 for obstructing justice by failing to produce identification upon request. He was booked and released. At no time in the course of the encounter was he imprisoned. The charges were dismissed in 1983.

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[1] Later in the opinion, the district court held that all Ada County defendants were immune.

On a Friday morning in 1987, Mrs. Hallstrom's vehicle was stopped by an officer of the Garden City Police Department for a broken taillight. When she refused to show the officer her driver's license or proof of liability insurance coverage, she was arrested. She told the officer that she did not believe Idaho law required her to carry a license, and that, in any event, requiring her to carry one violated her right to travel. Officer Snapp arrested her, searched her car, and transported her to the Ada County jail. Officer Thurston oversaw the impoundment of the car.

While in custody, Mrs. Hallstrom was cited for motor vehicle violations.[2] She repeatedly requested presentation to a magistrate and refused to answer routine booking questions or to submit to routine booking procedures, on the ground that such questions and procedures violated her constitutional rights. Because of Hallstrom's failure to cooperate, the county officials charged her with obstruction of justice. They ignored her demands to be taken before a magistrate, and simply incarcerated her until she agreed to cooperate with county booking procedures. Susan Hallstrom was held in Ada County jail for six days. She was not taken before a judicial officer until Monday afternoon, four days following her arrest, at which time

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[2] It is not clear from the record before us exactly what citations Mrs. Hallstrom received prior to the effort to complete her booking. Nor can we determine whether she also was charged (rather than cited) with obstructing justice for failing to produce the documentation requested at the site of the arrest. For our purposes the charging history is not controlling. According to appellees, it is Ada County's "policy" to book anyone arrested.

she was arraigned before a state court judge and ordered released on bail. Only after her husband obtained a court order requiring her to comply with booking procedures did she submit to answering questions, and allow fingerprints and photographs to be taken. Late Wednesday afternoon, two days after the state court judge had ordered her released, the county officials released Mrs. Hallstrom on bail.

III. MR. HALLSTROM'S CLAIMS

With respect to Mr. Hallstrom's arrest, appellees argue that any claims arising from events occurring in 1982 are time-barred. The applicable statute of limitations for Section 1983 actions is the limitations period for personal injury actions in the state where the action arose. *Owens v. Okure*, 488 U.S. 235, 249-50 (1989). In Idaho, the applicable statute is Idaho Code § 5-219(4) (1990), which provides for a limitations period of two years from the date the cause of action accrues. using the broadest interpretation possible, the latest date that Mr. Hallstrom could have become aware that his civil rights were violated was January, 1983, when the charges against him were dismissed. The Hallstroms filed their complaint in 1987; therefore, Mr. Hallstrom's claims are time-barred. We affirm the district court's dismissal of his claims.

IV. MRS. HALLSTROM'S ARREST & SEARCH

Mrs. Hallstrom contends that Officer Snapp illegally arrested her and searched her car and personal effects without probable cause in violation of her fourth Amendment and other constitutional rights.

No one questions that Officer Snapp had probable cause to stop her vehicle when he observed its broken taillight. Idaho Code § 49-906 (1988); *In re Griffiths*, 744 P.2d 92 (Idaho 1987) (traffic offenses give police probable cause to stop vehicle). Mrs. Hallstrom erroneously argues that Idaho law does not require her to have a driver's license as a condition of driving a motor vehicle in Idaho. To the contrary, Idaho law makes it a misdemeanor to drive a vehicle without a driver's license. Idaho, Code §§ 49-316 (formerly § 49-319), 49-236 (1988 & Supp. 1992). Operation of a motor vehicle is a "highly regulated activity, therefore the driver accepts the regulatory burden along with the benefit of using the public roads." *State v. Henderson*, 756 P.2d 1057, 1070 (Idaho 1988) (Walters, J., dissenting). The laws requiring drivers to carry proof of insurance and registration are valid laws enacted by the state of Idaho. Idaho Code § 49-1232 (formerly § 49-245) (1988 & Supp. 1992); *see state v. Gibson*, 697 P.2d 1216, 1218 (Idaho App. 1985); *State v. Reed*, 686 P.2d 842 (Idaho App. 1984). Under Idaho Code § 49-1407 (1988), an officer has the option of taking the person "without unnecessary delay" before a magistrate rather than issuing a traffic citation, "[w]hen the person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court." Because Mrs. Hallstrom failed to identify herself[3] and, by her actions,

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[3] Hallstrom now contends she carried other identification but did not produce it because the officer requested only her license. Her failure to volunteer information which would serve as identification, in combination with her misdemeanor offenses, gave Officer Snapp sufficient reason to arrest her.

demonstrated that she was likely to continue driving without a license, Officer Snapp did not violate her rights under Idaho law or the Constitution by making the arrest.

Nor did the officer violate Mrs. Hallstrom's Fourth Amendment rights in searching the car and items in it within her reach. Searches incident to lawful arrest constitute a well-established exception to the warrant requirement of the Fourth Amendment. *United States v. Robinson*, 414 U.S. 218, 224 (1973); *see also New York v. Belton*, 453 U.S. 454, 460 (1981); *United States v. Lorenzo*, 867 F.2d 561, 562 (9th Cir. 1989). Because she committed a misdemeanor in Officer Snapp's presence, he had probable cause to arrest her. His subsequent search of the vehicle and its contents was proper and reasonable.[4] We

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[4] Mrs. Hallstrom argues that Officer Snapp violated her due process rights by arranging for her vehicle to be towed from the parking lot where she had pulled in off the road. It does not appear that the officer impounded the car in order to search it since he already had conducted the search incident to her arrest. *United States v. Feldman*, 788 F.2d 544, 553 (9th Cir. 1986) (discussing unlawful motivation for impounding and inventorying vehicle), *cert. denied*, 479 U.S. 1067 (1987). His decision to direct its removal under the supervision of another officer is consistent with an independent "community caretaking function." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). Under *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976), "[t]he authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *See also United States v. Griffin*, 729 F.2d 475, 480-81 (7th Cir.), *cert. denied* 469 U.S. 830 (1984). In discharging their community caretaking functions, it was not unreasonable for the arresting officers to protect the car from vandalism or theft by having it towed. *United States v. Johnson*, 734 F.2d 503, 505 (10th Cir. 1984); *United States v. Griffin*, 729 F.2d at 480.

affirm the district court's dismissal of Mrs. Hallstrom's Fourth Amendment claims with respect to the arrest and search.

V. MRS. HALLSTROM'S ADDITIONAL CLAIMS

Mrs. Hallstrom contends that the county and city officials violated her right to be taken before a magistrate without undue delay, her right to be released upon a court order, and her right to conditions of confinement commensurate with her status as a person awaiting presentation to a judicial officer and due for release on minor traffic citations. We address each of those contentions below. Because we reverse the district court's grant of summary judgment against Mrs. Hallstrom and remand the case on other grounds, we do not reach Mrs. Hallstrom's additional constitutional claims including the constitutionality of the Idaho obstruction of justice statute.[5] The record is not entirely clear as to what determinations the state court made regarding the obstruction charges.[6] Because an obstruction charge is not necessary to support either the initial arrest or booking under a general booking policy, we decline to review any rulings in this regard.

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[5] Hallstrom also charges defendants with violating her right to remain silent, her right of free speech, her right to counsel and her right to be free from cruel and unusual punishment.

[6] *See supra* note 2.

A. *Delayed Hearing Before a Magistrate*

Two provisions of the Idaho Code spell out postarrest procedures. Where an arrest is made without a warrant, "the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate." Idaho Code § 19-615 (1987). Where an arrest is made for "any misdemeanor violation of the [motor vehicle laws]" and the arrested person "does not furnish satisfactory evidence of identity," the arresting officer has the option of issuing a traffic citation (and releasing the offender) or taking her "without unnecessary delay before the proper magistrate as specified in section 49-1411 . . . " Idaho Code § 49-1407 (1988). THE DISCRETION is very narrow: the arrested person either must be released or taken before a magistrate.[7]

[1] In addition to their duties under state law, the officers were subject to a constitutional duty to ensure that Mrs. Hallstrom be taken before a judicial officer

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[7] In case these provisions leave any doubt, another section clarifies the nature of this discretion: "Whenever a person is halted by a peace officer for a misdemeanor traffic violation and is not taken before a magistrate as required . . . the officer shall issue a citation." Idaho Code § 49-1409 (1988); *see also* Idaho Code § 49-1411 (1988) ("[a] person shall be taken before a magistrate or given a traffic citation and the charge subsequently processed, as provided by rule of the supreme court"). Idaho Crim.R.5(b) (1992) provides in relevant part:

> A defendant arrested, whether or not pursuant to a warrant, shall be taken before a magistrate in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays.

"promptly after arrest." *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975).[8] All we must decide is whether they or the county officials[9] to whom they delivered Hallstrom complied

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[8] Mrs. Hallstrom does not allege that the officers should have exercised their discretion to release her on a traffic citation. She only insists that they be held to their statutory and constitutional duty to provide for a prompt hearing before a magistrate. Thus, *Higbee v. City of San Diego*, 911 F.2d 377 (9th Cir. 1990), relied on by Garden City, is inapposite. There the plaintiffs argued that the officers' decision not to issue them a field release citation, as they had done on a previous occasion, constituted impermissible punishment. Three plaintiffs were released from custody within three hours, the fourth within eight hours. The opinion does not indicate whether a hearing before the magistrate precipitated the releases.

[9] The district court determined that the Ada County defendants were entitled to dismissal of all state law claims. We agree that Susan Hallstrom failed to comply with procedures set forth by the Idaho Tort Claims Act. Idaho requires that actions against political subdivisions (including counties and cities) or their employees be filed within a 180-day period of limitations. Idaho Code § 6-906 (1990). While the Hallstroms' federal complaint was filed within approximately six months of Mrs. Hallstrom's arrest and detention, the Ada County supervisor, responsible for maintaining a record of all tort claims against the county, certified that no claim had been filed by the Hallstroms against Ada County within the requisite period. Mrs. Hallstrom makes no argument that the statute of limitations should be tolled under state law; her state law claims against the county are clearly time-barred. On appeal Hallstrom admits that she did not file a charge against any of the defendants in compliance with state procedural requirements. All charges asserting state law claims are consequently time-barred. *Ortega v. O'Connor*, 764 F.2d 703, 707 (9th Cir. 1985), *reversed on other grounds*, 480 U.S. 709 (1987).

That is not to say that Susan Hallstrom may not assert *federal* claims based on the defendants' failure to comply with state law. We recognize Section 1983 actions grounded on claims

with this obligation. Recently the Supreme Court indicated that a jurisdiction which "provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein.*" *County of Riverside v. McLaughlin,* 111 S. Ct. 1661, 1670 (1991).

[2] The underlying rationale for according an arrested individual a prompt probable cause hearing before a magistrate is set forth in *Gerstein:*

> [A] policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate. There no longer is any danger that the suspect will escape or commit further crimes while the police submit their evidence to a magistrate. And, while the State's reasons for taking summary action subside, the suspect's need for a neutral determination of probable cause increases significantly. The consequences of prolonged detention may be more serious than the interference occasioned by arrest. . . . When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.

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of the deprivation of state-created liberty or property interests. *See infra* note 22; *see also Davis v. Sherer,* 468 U.S. 183, 193 n.11 (1984).

420 U.S. at 113-14. Concerned that local government should have some flexibility and latitude, the *McLaughlin* Court created a burden of proof mechanism by which to evaluate claims of delay. A person taken before a judicial officer within the 48-hour period may still challenge the arresting officials for unreasonable delay, but she bears the burden of proving that "her probable cause determination was delayed unreasonably." 111 S. Ct. at 1670. The Court gave as examples of reasonable delays: "unavoidable delays in transport[ation],"[10] "late-night bookings where no magistrate is readily available,"[11] lack of availability of arresting officer,[12] and "other practical realities."[13] *Id.* Examples of unreasonable delays include

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[10] *See e.g., United States v. Alvarez-Sanchez*, 975 F.2d 1396, 1400 (9th Cir. 1992) (delay viewed "in light of the available means of transportation" or "the logistics involved") (interpreting 18 U.S.C. § 3501).

[11] *See, e.g., United States v. Doe*, 701 F.2d 819, 824 (9th Cir. 1983) ("[t]he particular facts in this case persuade us that the delay here was reasonable. The government made a good faith effort to arraign Doe as soon as possible, but no magistrate was available until the morning") (interpreting 18 U.S.C. § 5033 (1976)).

[12] *See, e.g., Doe*, 701 F.2d at 824 ("[t]he agents were extremely busy the day Doe was taken into custody, and they had to give priority to more urgent cases, including a woman in late pregnancy").

[13] The Ninth Circuit has resisted creating a per se rule for evaluating the reasonableness of delay. *Kanekoa v. City and County of Honolulu*, 879 F.2d 607, 610 (9th Cir. 1989), *cert. denied*, 111 S. Ct. 2055 (1991). Instead, it has looked to the existence of "exigent circumstances" to justify delay. *See, e.g., United States v. Doe*, 701 F.2d 819, 824 (9th Cir. 1983); *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1024 (9th Cir. 1983). For a definition of "exigent circumstances," *see Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1455

delays "for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual,[14] or delay for delay's sake." *Id.* After a 48-hour period has elapsed, "the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance." *Id.* The Court specifically excluded justification based on difficulties consolidating pretrial proceedings or intervening weekends and holidays. *Id.*

Mrs. Hallstrom was arrested on Friday morning at approximately 9:00 a.m. Although she repeatedly demanded to see a magistrate, she was not taken before a judge until approximately 4:00 p.m. on Monday afternoon, some seventy-nine hours later, despite the fact that a magistrate is on call twenty-four hours a day in Ada County, and despite the location of the magistrate's office

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(9th Cir. 1991) (Hall, J., concurring) Includes prevention of physical harm or the destruction of evidence or escape, or "some other consequence improperly frustrating legitimate law enforcement efforts"). One "practical reality" held to amount to circumstances which reasonably occasion delay is the insobriety of the arrested individuals. *See Kanekoa*, 879 F.2d at 611 (intoxication caused delay). *McLaughlin* does not displace this method of analysis except as it places the burden of proof on the detainee to establish the lack of "exigent circumstances" if held for less than forty-eight hours. *McLaughlin*, 111 S. Ct. at 1670.

[14] *See, e.g., United States v. Jernigan*, 582 F.2d 1211, 1213-14 (9th Cir.), *cert. denied*, 439 U.S. 991 (1978) (where arresting officer failed to take defendant to magistrate on demand and stated that defendant "would have a long weekend to think about the matter" in jail, court persuaded that agent "deliberately delayed arresting [defendant] until a time when, as he well knew, [defendant] would not be able to go before a magistrate").

in the same building as the Ada County jail.[15] Hallstrom indicates that her arraignment was conducted by video, a technique which presumably affords magistrates and judges more ready access to pretrial detainees. Nevertheless, she alleges that upon demanding a hearing before the magistrate, she was told "demand all you want, court is at 3 p.m. Monday." Plaintiff's "Asseveration" at 5 *contained in* Addendum to ER, *Hallstrom v. City of Garden City* (D. Idaho 1991) (No. 87-1360).[16]

[3] To justify delay beyond the 48-hour period mandated by the Court, defendants must establish that an emergency or extraordinary circumstances occasioned the delay in bringing Susan Hallstrom before the judge. Mindful that *McLaughlin* was decided after the detention at issue in this case, we also analyze the justification for delay in terms of the then prevailing "exigent circumstances" standard. *See, e.g., Kanekoa v. City & County of Honolulu*, 879 F.2d 607, 611 (9th Cir. 1989), *cert. denied*, 111 S. Ct. 2055 (1991); *United States v. Doe*, 701 F.2d 819, 824 (9th Cir. 1983); *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1024 (9th Cir. 1983). Under either analysis, the defendants' justification fails. The only reason given by Ada County for delaying Susan Hallstrom's hearing is that she refused to comply with all elements of the booking procedure, including furnishing the police with satisfactory

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[15] *See United States v. Jernigan*, 582 F.2d at 1213 (noting the proximity of the DEA office to the U.S. Courthouse).

[16] All citations to the district court record ("DCR") or the excerpts of record ("ER") are part of the record in this case.

evidence of her identity.[17] The county defendants have made no showing that this delay was justified by reasonable and prompt administrative procedures, or that the delay was anything other than a coercive measure imposed after it became clear that she was not going to answer booking questions without a court order and was not going to change her mind. Indeed, the county defendants ascertained Susan Hallstrom's identity relatively promptly from papers found in her possession.

The defendants and the district court appear to believe that the constitutional *duty* to ensure that an arrested individual receives a prompt probable cause hearing before a judicial officer is displaced indefinitely by the *right* to book arrested individuals in accordance with county policy. The district court's holding that the right to book a person lawfully arrested justified detaining her without limit (and without access to a magistrate to pass on the lawfulness of the arrest) in order to "coerce" compliance with booking, Order Granting Defendants' Motions for Summary Judgment at 23, *contained in* ER, is simply wrong. While the booking process itself (and its attendant fingerprinting and photographing) may be entirely proper, it does not trump the Fourth Amendment proscription against over-long detention based solely on a probable cause determination made by the arresting officer.

[4] An arresting officer's determination of probable cause justifies only a "brief period of detention to take

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[17] Notably, this deficiency is the very one which Idaho law makes clear triggers the need to take an individual before a magistrate. Idaho Code § 49-1407(1) (1988).

the administrative steps incident to arrest." *Gerstein*, 420 U.S. at 114. The Court attached special significance to the shifting calculus of interests from the state to the individual "in custody," especially one in custody for a "prolonged" period. It emphasized the "high stakes" involved for individuals' liberty interests and undertook to ensure "meaningful" Fourth Amendment protection. Under *Gerstein*, refusal to cooperate with booking procedures cannot excuse extended detention based solely on the arresting officer's assessment of probable cause. We note that the officials had other options including completing the booking after the probable cause determination or completing a partial or "Doe" booking; they could have completed booking after the probable cause determination[18] or completed a partial[19] or "Doe" booking. Four days of incarceration is not a "brief period." All of the concerns raised by the Court in *Gerstein* are implicated here. Susan Hallstrom was in custody for a prolonged period. The county's interest in booking her, after reasonable attempts to do so have proven futile, does not outweigh her constitutional right to be taken before a magistrate. Booking may not serve as a threshold condition which, if not satisfied, indefinitely suspends the

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[18] *See, e.g., Amsler v. United States*, 381 F.2d 37, 46 (9th Cir. 1967) (appellant taken before judicial officer for arraignment and setting of bail before undergoing booking).

[19] The defendants possessed several identity cards and a passport from which they could have extracted much of the information required for booking.

operation of the Fourth Amendment. *McLaughlin* admonishes that "the police should make every attempt to minimize the time a presumptively innocent individual spends in jail." 111 S. Ct. at 1670.

We are not persuaded by the reasoning of the district court:

> Defendants are certainly entitled to a prompt appearance before a magistrate. *However,* where as here, Sue Hallstrom attempted to thwart the administrative steps incident to her arrest, she cannot later declare that constitutional deprivations occurred.

Order Granting Defendants' Motions for Summary Judgment at 21 n.9 *contained in* ER; *see also Shaw v. Boise City,* No. 84-1088 (D. Idaho, Sept. 12, 1985) (Ryan, J.); *Gibson v. Crowell,* No. 84-1475 (D. Idaho, Sept. 13, 1985) (McNichols, J.). The fact that the booking process may be constitutional, *Higbee v. City of San Diego,* 911 F.2d 377, 380 (9th Cir. 1990), does not mean that a city or county constitutionally may incarcerate a person indefinitely until she voluntarily submits to booking. Were we reviewing the propriety of a short delay to allow tempers to cool, and the opportunity for calm reconsideration, we might have a different result. In this case, however, the district court allowed a constitutional right to be held hostage for four days to a routine booking practice or policy.[20]

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[20] Nor do we mean to give license to those who would seek to frustrate the booking process or other administrative steps incident to arrest. As we acknowledge, *infra* at 3598, the government has a legitimate interest in orderly booking.

[5] We conclude that on this record the plaintiff has established the liability of Ada County,[21] the sheriff in his official capacity, and the jail commander, both in his official and individual capacities. As to Garden City and its arresting officers, however, we remand to the district court to determine liability. On remand, the court should consider whether the arresting police officers acted consistently with their statutory[22] and constitutional duties to ensure that Hallstrom be presented promptly to a judicial officer when they delivered her to the Ada County jail for booking prior to presentation.

Turning to the question of damages, we affirm the district court's holding that Ada County is not liable for punitive damages. *City of Newport v. Fact Concerts, Inc.*,

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[21] The county has never disputed that its insistence on booking before the prisoner is taken to a magistrate is a policy of the county. *See Monell v. Department of Social Servs.*, 436 U.S. 658, 690-91 (1978). Instead, it has argued, here and in similar actions in district court, that its policy is justified. *See infra*, at 3595-96.

[22] This court has held that "a violation of state . . . law can serve as the basis of a [S]ection 1983 action '[w]here the violation of state law causes the deprivation of rights protected by the Constitution.' " *Draper v. Coombs*, 792 F.2d 915, 921 (9th Cir. 1986) (quoting *Wirth v. Surles*, 562 F.2d 319, 322 (4th Cir. 1977), *cert. denied*, 435 U.S. 933 (1978)). In addition, the laws of Idaho guaranteeing timely presentation to a magistrate, *e.g.*, Idaho Code §§ 19-615, 49-1407, 49-1409, 49-1411, "place[ ] substantive limitations on official discretion" and contain "explicitly mandatory language" sufficient to create a liberty interest protected by the Fourteenth Amendment and actionable under Section 1983. *Mendoza v. Blodgett*, 960 F.2d 1425, 1428-29 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 1005 (1993); *see also Haygood v. Younger*, 769 F.2d 1350, 1355 (9th Cir. 1985) (en banc), *cert. denied*. 478 U.S. 1020 (1986).

453 U.S. 247 (1981). However, we reverse its determination that the defense of qualified immunity shielded the Ada County defendants. The court held that the jail commander benefited from the qualified immunity defense of " 'objectively reasonable reliance on existing law.' [*Kentucky v. Graham*, 473 U.S. 159,] 166-67 [(1985)]." Order Granting Defendants' Motions for Summary Judgment at 18 *contained in* ER. It stated that in the light of previous decisions and "because it cannot be said that the actions of the Ada County Defendants were 'apparently' unlawful, the defense of qualified immunity applies. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). *See, e.g., Malley v. Briggs*, 475 U.S. 335, 341 (1986)." Order Granting Defendants' Motions for Summary Judgment at 23 *contained in* ER.

[6] The district court erroneously included Ada County and the officials sued in their official capacities among the Ada County defendants for which a defense of qualified immunity is available. A municipality (and its employees sued in their official capacities) may not assert a qualified immunity defense to liability under Section 1983. *Owen v. City of Independence*, 445 U.S. 622, 638 (1980); *Kentucky v. Graham*, 473 U.S. 159, 165-68 (1985). Whether the qualified immunity defense applies to the officials of Ada County sued in their individual capacities turns on "the 'objective legal reasonableness' of the action assessed in light of legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton*, 483 U.S. at 639 (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 & 819 (1982)); *see also Davis v. Scherer*, 468 U.S. 183, 191 (1984) ("[w]hether an official may prevail in

his qualified immunity defense depends upon the 'objective reasonableness of [his] conduct as measured by reference to clearly established law' ") (quoting *Harlow,* 457 U.S. at 818). A two-part analysis is required: "(1) Was the law governing the official's conduct clearly established? (2) Under that law, could a reasonable officer have believed the conduct was lawful?" *Act Up!/Portland v. Bagley,* No. 90-35888, slip op. at 1076-77 (9th Cir. Feb. 10, 1993). At the time of Mrs. Hallstrom's incarceration, Supreme Court precedent clearly established that an arrested individual must be taken before a magistrate "promptly after arrest." *Gerstein v. Pugh,* 420 U.S. at 125. The Court at that time did not set out any specific period of time which could be considered presumptively "prompt." It indicated that an arresting officer's determination of probable cause justifies only a "brief period of detention to take the administrative steps incident to arrest." *Id.* at 114. The law was clearly settled that Mrs. Hallstrom had a constitutional right to "prompt" presentation to a judicial officer.[23] We find that no "objectively reasonable" official could consider the initial four-day period of incarceration "brief," or Mrs. Hallstrom's presentation to the state court judge "prompt."[24]

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[23] The Ninth Circuit's law was also clearly established. It employed an "exigent circumstances" test to evaluate compliance with *Gerstein. See supra* note 13.

[24] Because *Gerstein* contemplates a balancing of interests, an "objectively reasonable" decision depends in part on the factual circumstances of the case. Mrs. Hallstrom, arrested for minor traffic violations (none of which ultimately were pursued), and held for obstruction of justice (either for failure to produce her traffic license or for failure to voluntarily comply with booking) was kept incommunicado for several days

[7] The fact that prior to its detention of Mrs. Hallstrom, Ada County had been granted summary judgment against other plaintiffs asserting constitutional claims colorably similar to those asserted in this case, *see Shaw v. Boise City*, No. 84-1088 (D. Idaho, Sept. 12, 1985) (Ryan, J.); *Gibson v. Crowell*, No. 84-1475 (D. Idaho, Sept. 13, 1985) (McNichols, J.), does not alter the result.[25] In neither case did the district court consider *Gerstein* or analyze the Ada County defendants' actions in light of clearly established Ninth Circuit and Supreme Court law. While at one level it may seem harsh not to allow law enforcement officers to rely on local judicial officers' opinions, the Supreme Court requires what is essentially an artificial test, one that specifically looks to objective, not subjective, reasonableness. A judicial officer's misjudgment will not obviate or excuse another official's obligation to act with *objective* reasonableness. *See Malley v. Briggs*, 475 U.S. at 345-46 & n.9; *Bergquist v. County of Cochise*, 806 F.2d 1364, 1368 (9th Cir. 1986), *overruled on other grounds by City of Canton v. Harris*, 489 U.S. 378 (1989). Under the objective test, an official is charged with knowledge of controlling Supreme Court and Ninth Circuit precedent. This is not a case where the underlying facts are unclear or in dispute. *Cf. Act Up!/Portland v.*

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without access to a magistrate. The only explanation for delay was to coerce voluntary compliance with booking procedures. No "objectively reasonable" official could view this concern as sufficiently exigent to hold Mrs. Hallstrom for four days.

[25] These decisions are unpublished and indicate none of the underlying facts. For example they are silent on the length of the delay before the arrested individuals were presented to a magistrate.

Bagley, No. 90-35888, slip op. at 1079 (9th Cir. Feb. 10, 1993) (although law as to strip searching misdemeanor detainees clearly established, remanded for "an inquiry as to the facts and circumstances within [the defendants] knowledge"). Defendants acknowledge Mrs. Hallstrom was detained for four days prior to her presentation to a judicial officer. We reverse the district court's determination that the jail commander had qualified immunity from personal liability, and that he and the other Ada County defendants sued in their official capacities were shielded by qualified immunity.

B. *Continued Detention after Judicial Order Releasing on Bail*

Hallstrom alleges that her continued detention after the Monday appearance in court when she was ordered released on bail by the state court judge amounted to false imprisonment. It does not appear that the judge conditioned his order on Hallstrom's compliance with booking. Defendants admit that on that same day Robert Hallstrom attempted to post bail but that it was not accepted and would not be accepted until Susan Hallstrom submitted to the booking process. They offer as justification for this continued detention that it is the policy of Ada County jail not to release an arrested individual until she has submitted to the booking process.

Neither the defendants nor the district court address this second period of incarceration as a distinct and separable event. The defendants deny, without elaboration, Hallstrom's charge of false imprisonment. The district court justifies all six days of incarceration on the same

rationale without addressing the effect of the intervening court order to release Hallstrom on the fourth day: " '[I]ncommunicado incarceration' of a person who refuses to comply with booking procedures constitutes neither a violation of substantive or procedural due process under the fourteenth amendment." Order Granting Defendants' Motions for Summary Judgment at 22 *contained in* ER.

[8] As we have pointed out with respect to the prepresentation period of detention, the question is not whether Ada County has a right to book Susan Hallstrom, or whether the booking procedures themselves are constitutional. The question is whether the county constitutionally may "coerce" Susan Hallstrom to comply with booking procedures once a judicial officer has ordered her released on bail. If the defendants wished to book her before release, among available options were partially booking her on the basis of information gleaned from the identification cards and passport found in her purse or seeking an order from the magistrate directing her to comply with booking. They did not have the right to continue her detention in a "battle of wills" when the detention was allegedly based on the "position . . . that she can stay there forever; she will not leave until the fingerprints are taken." Dep. of Robert Hallstrom at 22-23 contained in DCR.[26]

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[26] The county apparently intended to outwait Hallstrom. She relates: "I asked if I was serving a life sentence. They said I was unless I submit[ted] to booking (waiving my rights) and that I would give up long before they do." Plaintiff's "Asseveration" at 15-16 *contained* in Addendum to ER.

C. *Cognizable Conditions of Confinement Claims*

The district court preserved Hallstrom's "conditions of confinement" claims in an earlier order but failed to address them when it granted summary judgment. These claims are cognizable under the Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 & n.16 (1979); *Redman v. County of San Diego*, 942 F.2d 1435, 1440 n.7 (9th Cir. 1991) (en banc), *cert. denied*, 112 S.Ct. 972 (1992).

[9] *Bell v. Wolfish* sets out the standard by which to judge claims of unconstitutional conditions of confinement for pretrial detainees who have "only [had] a 'judicial determination of probable cause as a prerequisite to [the] extended restraint of [their] liberty following arrest.' " *Bell*, 441 U.S. at 536 (quoting *Gerstein v. Pugh*, 420 U.S. at 114). The Court held that the government may subject such a detainee to "the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution." *Id.* at 536-37. A court ruling on these claims, "must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." *Id.* at 538. With respect to the first prong of this test, intent to punish may be discerned if (1) "an alternative purpose to which [the restriction] may rationally be connected is assignable for it" or (2) if the restriction "appears excessive in relation to the alternative purpose assigned [to it]" or, as restated later, "the conditions . . . [are] employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." *Id.* at 538, 539 n.20. As to the second prong of the test, the Court indicated that the government has a

legitimate interest in "ensuring a detainee's presence at trial," "maintaining jail security," and in "the effective management of the detention facility once the individual is confined." *Id.* at 540. Justice Stevens pointed out these considerations should be examined in the light of the "individual and personal" due process guarantee which "mandates that an innocent person be treated as an individual human being and be free of treatment which, as to him, is punishment." *Id.* at 584 (Stevens J., dissenting).

[10] Since the *Bell* Court was at pains to point out that a probable cause hearing had taken place for the detainees in question and thus that it did not find itself in a *Gerstein* context, *id.* at 533-34, 536, we conclude that Hallstrom is entitled *at least* to the protections afforded pretrial detainees. Notably, during the first period of her incarceration, Susan Hallstrom had not been accorded a probable cause hearing and, during the second period, she was detained despite a court order requiring her release. Justice Stevens focussed on "[t]he pretrial detainees whose rights are at stake" as "innocent men and women who have been convicted of no crimes." *Id.* at 579 (Stevens J., dissenting). Susan Hallstrom, however difficult to deal with, qualifies for this status.

[11] Hallstrom should not be foreclosed from presenting evidence that might establish liability under *Bell*. The defendants used detention as means to "coerce" compliance with booking procedures. The detention itself (and her lack of access to a magistrate or release on bail) could be punishment for failing to cooperate. Especially given the alternatives available (including booking over her objections, requesting a booking order, partial booking), six days' incarceration is "excessive" in relation to

its purpose. While the government has a legitimate interest in orderly booking, it does not command as high a priority, for example, as ensuring presence at trial or maintaining jail security. "Effective management" might have been achieved by choosing not to confine Hallstrom (and releasing her on the citations or the bail set by the judge) or by employing the alternative available to effectuate booking without detention.

[12] Hallstrom makes a number of claims detailing the inadequacy of the "conditions of confinement", including lack of access to a telephone, lack of hygienic conditions and privacy, lack of fresh air and exercise, lack of adequate food and liquids which she could eat and drink,[27] and restrictions on her religious expression (both as to diet and attendance at services).[28] Whether or not Hallstrom is ultimately successful in establishing constitutional deprivations, we find these are cognizable claims not appropriate for summary disposition.[29]

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[27] In response to questioning about her diet, Susan Hallstrom explained "[w]e've studied – we have arrived at our conclusions on diet by reading medical materials and consulting the Bible as to what foods are permissible and which are forbidden and by reading reports about contamination of food and the contamination of water." Dep. of Susan Hallstrom at 40 *contained in* DCR. "For religious reasons," she relates, "I do not eat pig or things cooked in lard or with lard in them, and I do not drink water with sodium fluoride (rat poison), asbestos, and other chemicals in it." Plaintiff's "Asseveration" at 6 *contained in* Addendum to ER.

[28] Defendants denied these claims in their Answers but admitted the underlying facts in response to requests for admission.

[29] Similar complaints were raised on appeal by the *Bell* petitioners and noted by the Court. 441 U.S. at 527 n.7 (inade-

In *Redman v. County of San Diego*, 942 F.2d 1435 (9th Cir. 1991) (en banc), we determined that in the context of providing for personal security, "[t]he requirement of conduct that amounts to 'deliberate indifference' provides an appropriate balance of the pretrial detainees' right to not be punished with the deference given to prison officials to manage the prisons." *Id.* at 1443. We noted that this standard would "protect against the deliberate, but arbitrary, choices by government." *Id.* We remand to the district court for its determination on the merits, guided by standards at least as solicitous as those applied to pretrial detainees.

V. CONCLUSION

Since we hold that Susan Hallstrom was deprived of her constitutional right not to be subjected to unreasonable delay in coming before a magistrate, and was held impermissibly after the judge directed her release on bail, we conclude that the Ada County defendants are liable. We affirm the district court's decision that Ada County is not subject to punitive damages. However, we reverse its determination that Ada County and its officials have qualified immunity from either official or personal liability. We remand for the award of compensatory damages against Ada County, the sheriff in his official capacity, and the jail commander in his official and individual capacities. We also remand for a determination as

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quate phone service, unsanitary conditions, inadequate and unsanitary food, improper restrictions on religious freedom); *id.* at 529 n.10 (phone service and special diets for Muslim inmates not before the Court).

to whether any county official sued in his individual capacity is liable for punitive damages.[30]

As to the Garden City defendants, we remand to the district court for its determination of liability on the merits. Should the court find the Garden City defendants liable, it should make a determination as to damages attributable to the city and to the arresting officers.

On remand, the district court should also determine the merits of Mrs. Hallstrom's claims of unconstitutional conditions of confinement and, if liability is found, any damages assessable against the Ada County defendants.[31]

Mrs. Hallstrom is entitled to costs on appeal,[32] The appellees' request for attorneys' fees on appeal is denied.

The decision below is AFFIRMED in part, REVERSED in part, and REMANDED to the district court for further proceedings consistent with this opinion.

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[30] The city and county officials are not shielded from punitive damages under *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 & n.32 (1981).

[31] Under Idaho law, Susan Hallstrom is entitled to name unknown parties in her pleadings and amend the complaint when the "true name[s]" of the parties are discovered. Idaho R. Civ. P. 10(a)(4); *see also* Idaho R. Civ.P. 15(c) (setting forth requirements for relation back of amendments). On the record, we cannot determine whether any discovery has been taken or pursued with respect to the Doe defendants named in the complaint. We make no determination as to her capacity under state law to amend her pleadings to reflect the true names of these defendants.

[32] We find Hallstrom's additional requests for declaratory and injunctive relief either moot or lacking in merit.

APPENDIX C

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SUE HALLSTROM and ROBERT C. HALLSTROM, Plaintiffs, v. CITY OF GARDEN CITY, ID., RANDY W. SNAPP, SGT THURSTON, SHERIFF KILLEEN, CAPTAIN MIKE ROBERTS, COUNTY OF ADA COUNTY, CITY OF BOISE, STATE OF IDAHO, and DOES I through X inclusive, Defendants.	CIVIL NO. 87-1360 **JUDGMENT** (Filed May 3, 1991)

Based upon this court's Order Granting Defendants' Motions for Summary Judgment, dated May 3rd, 1991, and the court being fully advised in the premises,

IT IS ORDERED AND ADJUDGED that plaintiffs take nothing against the defendants, and that this action be dismissed.

DATED this 3rd day of May, 1991.

/s/ Harold L. Ryan
HAROLD L. RYAN
UNITED STATES
DISTRICT COURT

APPENDIX D

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SUE HALLSTROM and ROBERT C. HALLSTROM, Plaintiffs, v. CITY OF GARDEN CITY, ID., et al., Defendants.	CIVIL NO. 87-1360 **ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT** (Filed May 3, 1991)

I. FACTS AND PROCEDURE

This suit was brought pursuant to 42 U.S.C. § 1983 by Mr. Robert C. Hallstrom and Mrs. Sue Hallstrom. In addition to challenging the constitutionality of Idaho Code § 18-705,[1] which prohibits resisting, delaying and/or obstructing police officers, Mr. and Mrs. Hallstrom allege a number of civil rights violations stemming from the conduct of the named defendants which occurred during

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[1] Idaho Code § 18-705 (1987) provides as follows:

> Resisting and obstructing officers. – Every person who wilfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office or who knowingly gives a false report to any peace officer, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars ($1,000), and imprisonment in the county jail not exceeding one (1) year.

an arrest of Mr. Hallstrom on March 24, 1982, and an arrest of Mrs. Hallstrom on June 19, 1987. The facts surrounding both arrests are briefly stated as follows.

According to the Complaint, on March 24, 1982, Mr. Hallstrom was attending arraignments at Ada County Traffic Court. He was allegedly approached by a police officer for no apparent reason and was asked to identify himself. When he refused to do so, he was searched and ultimately arrested for violating Idaho Code § 18-705. Mr. Hallstrom was released on the same day as his arrest. On January 23, 1983, the charge against Robert Hallstrom was dismissed.

More than four years later, on a Friday morning, June 19, 1987, Mrs. Hallstrom was stopped while driving through Garden City, in Ada County, Idaho, by a Garden City Police Officer named Randy Snapp. The reason for the stop was that the car Hallstrom was driving had a burned-out taillight. Mrs. Hallstrom happened to have a spare taillight in her trunk, which she and the officer installed. In the course of the stop, Mrs. Hallstrom was asked to produce a driver's license and proof of liability insurance, which Idaho law requires drivers to carry. She did not produce a license, but instead stated that she believed she was not required to have a license by Idaho law and that requiring her to have a license violated her liberty to travel guaranteed by the United States Constitution. Mrs. Hallstrom was arrested, taken into custody, and driven to the Ada County Jail, where she was issued citations for the motor vehicle violations and charged with violating Idaho Code § 18-705.

While in custody, Mrs. Hallstrom refused to participate in the booking procedures, again stating that she was acting on the basis of her constitutional rights. Because she refused to submit to the booking procedures, Mrs. Hallstrom was also charged by Ada County with violating Idaho Code § 18-705. Throughout the time Mrs. Hallstrom refused to submit to booking procedures and was being held in custody, she demanded to be taken before a magistrate. Mrs. Hallstrom alleges that during this time she was unable to make any telephone calls. On the afternoon of Monday, June 22, 1987, Mrs. Hallstrom was taken before a magistrate, and on June 24, 1987, she was released from custody. All charges against Mrs. Hallstrom were eventually dropped.

Based upon their experiences, Mr. and Mrs. Hallstrom brought this action naming Garden City Police Officer Randy W. Snapp, Sergeant Thurston and the City of Garden City (hereinafter the Garden City Defendants); as well as the Sheriff of Ada County Vaughn Killeen, Ada County Police Captain Mike Roberts, and Ada County (hereinafter the Ada County Defendants).[2] The gist of the Complaint is that the Ada County Defendants' arrest of Mr. Hallstrom in 1982 was improper; that the Garden City Defendants' arrest of Mrs. Hallstrom in 1987 was also improper; that the statute prohibiting resisting, delaying, and/or obstructing is unconstitutional; and that the Ada County Defendants' jailing of Mrs. Hallstrom, based on

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[2] The City of Boise and State of Idaho were also named defendants; however, they were previously dismissed by this court. *See* Memorandum Opinion & Order, dated May 13, 1988, at 8.

her refusal to submit to booking procedures, was improper.

Mr. and Mrs. Hallstrom jointly pray for four different forms of declaratory relief: (1) for a declaratory judgment that Idaho Code § 18-705 is unconstitutional on its face as applied to the plaintiffs' conduct in this case; (2) for an injunction directing the Garden City Chief of Police to assure this court that any order entered is read and understood by every present and future law enforcement officer; (3) for an injunction concerning the time frame in which prisoners at the Ada County Jail are allowed phone calls; and (4) for permanent mandatory injunctions directing Garden City to expunge all records of Mrs. Hallstrom's arrest from the records of the Garden City Police Department, Ada County Jail, and any other state or federal agencies. Also, Mrs. Hallstrom, individually, prays for monetary relief, including the costs of the action as authorized by 42 U.S.C. § 1988; $60,000 from each defendant for the six days of her incarceration; $10,000 for each separate civil rights violation; and for punitive damages in the amount of $100,000 from each defendant.

On September 5, 1990, after some difficulties in scheduling, the court entertained oral argument on the Ada County Defendants' Motion for Summary Judgment and the Garden City Defendants' Motion for Summary Judgment. The day before such motions came on for hearing, plaintiffs filed a cross-motion for summary judgment against the Ada County Defendants only. Finding that further oral argument would not aid the decision-making process, and finding that the plaintiffs' motion has been fully briefed, it too is ripe for consideration at this time.

Thus, having *thoroughly* considered *all* the arguments presented herein, based on the analysis to follow, this court finds that defendants' motions for summary judgment should be granted; plaintiffs' cross-motion should be denied; and this action should be dismissed.

II. ANALYSIS OF PENDING MOTIONS

Because of the distinctly different time frames involved, in analyzing the issues herein, Robert Hallstrom's claims shall be treated separately from those of Sue Hallstrom. Then, once the claims of each plaintiff are analyzed in relation to the named defendants, the court will turn to plaintiffs' challenge regarding the constitutionality of Idaho Code § 18-705.

A. Robert Hallstrom's Claims

In their motions for summary judgment, both the Garden City Defendants and the Ada County Defendants contend that Robert Hallstrom's claims are barred by the applicable Idaho statute of limitations.[3] This court agrees.

In *Wilson v. Garcia*, 471 U.S. 261, 275 (1985), the Supreme Court held that "the borrowing principle contained in § 1988 . . . is fairly construed as a directive to select, in each State, the one most appropriate statute of limitations for all § 1983 claims." Later, the Supreme

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[3] Additionally, the Garden City Defendants maintain that Robert Hallstrom has no standing to remain in this lawsuit as a plaintiff because there is no case or controversy between him and these defendants.

Court discussed its holding in *Wilson* and stated that "based upon the legislative history of § 1983 and the wide array of claims now embraced by that provision, that § 1983 'confer[s] a general remedy for injuries to personal rights.' " *Owens v. Okure*, 488 U.S. 235, 240 (1989). And, the Court expressly acknowledged having previously held that, "[b]ecause '§ 1983 claims are best characterized as personal injury actions' . . . a State's personal injury statute of limitations should be applied to *all* § 1983 claims." *Id.* at 240-41 (emphasis added).

Consistent with the holding in *Wilson*, actions brought pursuant to 42 U.S.C. § 1983 in Idaho must meet the two-year statute of limitations for personal injury actions which is set forth in Idaho Code § 5-219(4). *Henderson v. State*, 110 Idaho 308, 715 P.2d 978, *cert. denied*, 477 U.S. 907 (1986). Federal law dictates that the time of accrual of a civil rights claim is when plaintiff knows or has reason to know of the injury which is the basis for the action. Giving that standard a broad interpretation, based on the record, the latest date on which Robert Hallstrom could be considered to have known (or to have reason to have known) of his alleged civil rights violations was January 23, 1983, the date on which the charge against him was dropped.

Robert Hallstrom did not commence this action within two years of January 23, 1983, but instead waited almost four years, until December 22, 1987. Therefore, to the extent this action states claims by Mr. Hallstrom against the Garden City Defendants and the Ada County

Defendants, such claims are barred by Idaho Code § 5-219(4).[4]

B. Sue Hallstrom's Claims

Mrs. Hallstrom filed her claims against both defendants within two years of the events at issue. There is no statute of limitations problem with Mrs. Hallstrom's claims. Thus, the court turns to the merits.

In order to establish liability under 42 U.S.C. § 1983, a plaintiff must prove two essential elements: (1) that the conduct complained of was committed by a person under color of state law, and (2) that the conduct resulted in a deprivation of rights, privileges, or immunities secured by the Constitution or the laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). In this case, the actions of the defendants were clearly taken under color of state law. However, in their motions for summary judgment, the defendants contend that Mrs. Hallstrom has failed to state a case under 42 U.S.C. § 1983. Thus, the critical question for this court to determine is whether or not Mrs. Hallstrom was deprived of any of her constitutional rights as a *result of the conduct of the Garden City Defendants and/or the Ada County Defendants.*

Mrs. Hallstrom's claims against each defendant shall be addressed in turn.

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[4] Consequently, the remainder of this decision addresses only the claims raised by Plaintiff Sue Hallstrom.

1. Claims Against the Garden City Defendants.

As previously noted, Mrs. Hallstrom was arrested in Garden City after being stopped by a police officer for driving with a burned-out taillight. Mrs. Hallstrom was asked to produce her license and proof of insurance, and she did not do so. Mrs. Hallstrom contends that her arrest violates her right to free speech, and that she was arrested not for violating any law, but for saying she had a constitutional right to drive without a license.

With respect to her action against the Garden City Defendants, Mrs. Hallstrom challenges her arrest under Idaho Code § 18-705,[5] which prohibits willfully resisting, delaying and/or obstructing police officers, and essentially attempts to tie rights of free speech arising under the First Amendment (as well as rights under the Fourth and Fourteenth Amendments) with her alleged right to drive without a license and/or to refrain from identifying herself upon being stopped for a traffic infraction. She contends that because she has a constitutional right to drive without a license, she cannot be arrested for resisting, delaying and/or obstructing an officer when she has done so. This court does not agree.

The court first examines Mrs. Hallstrom's contention that she was improperly arrested. Idaho Code § 48-316 (formerly § 49-319) (1988 and Supp. 1990) provides the following:

> Driver's License to be carried and exhibited on demand. – Every licensee shall have his driver's license in his immediate possession at all times

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[5] *See supra* note 1.

> when operating a motor vehicle and shall, upon demand, surrender the driver's license into the hands of a peace officer for his inspection. However, no person charged with a violation of the provisions of this section shall be convicted if a driver's license issued to the person and valid at the time of his arrest is produced in court.

And, Idaho Code § 49-301 (1988 and Supp. 1990), provides, in pertinent part, that: "*No person, except those expressly exempted* by the provisions of this chapter, shall drive any motor vehicle upon a highway unless the person has a valid driver's license" (emphasis added). Thus, the law in Idaho provides that those who use the highways must have valid licenses. In her Complaint, Mrs. Hallstrom contests this fact by stating:

> Defendants maliciously charged Plaintiff Sue with the crime of failure to show an operator's license when Idaho [C]ode specifically states that only licensed operators are required to show licenses. Defendants made this malicious charge knowing that Plaintiff was not a licensee. Police officers cannot require that which is impossible as the law does not require the impossible.

Complaint, filed Dec. 22, 1987, at 12 ¶ 42. However, such reasoning misstates the law since it focuses only on the first sentence of Idaho Code § 48-316 and completely ignores the existence of Idaho Code § 49-301.

There is nothing in the record to suggest that Mrs. Hallstrom was "expressly exempted" from carrying a driver's license, nor that she indicated such to Officer Snapp at the time of the traffic stop. Rather, Mrs. Hallstrom contends that:

> Defendant Snapp arrested Plaintiff Sue merely because she was an annoyance to Defendant and charged Plaintiff with a crime of not providing identification upon demand (i.e., obstructing and delaying), when identification other than an operator's license was never demanded, and without giving Plaintiff any opportunity to provide other identification, rendering compliance with Defendant's charge a physical impossibility there by denying Plaintiff her liberty without due process of law, and making a false charge (i.e., not producing identification, even if the demand has been made, does not constitute obstructing and delaying).

Complaint, filed Dec. 22, 1987, at 12 ¶ 43.

At the time Officer Snapp stopped Mrs. Hallstrom on June 19, 1987, she had no valid driver's license or proof of insurance with her, and demonstrated no ability to produce such (i.e., that they had been forgotten at home, or in another vehicle, etc.); accordingly, Mrs. Hallstrom was committing misdemeanors in Officer Snapp's presence in violation of Idaho Code § 49-236. In support of the Garden City Defendants' motion for summary judgment, Officer Snapp states:

> [That he] asked Sue Hallstrom for her driver's license, registration and proof of insurance. Sue Hallstrom responded, "I am not required to have a driver's license." [He] explained that Idaho law required any person operating a motor vehicle on the highways of the State of Idaho to have a valid operator's license in their possession. Sue Hallstrom responded, "That is not according to the Constitution."

> [He] again requested to see her driver's license and Sue Hallstrom refused to give [him] a driver's license. Sue Hallstrom also refused to identify herself. She then started to get back in her vehicle.
>
> [Officer Snapp] then explained to Sue Hallstrom that if she would not identify herself or produce a driver's license, she would be placed under arrest for resisting and delaying an officer. Sue Hallstrom then advised [Officer Snapp] that not having a driver's license was not an arrestable offense.
>
> Since she would not identify herself, [Officer Snapp] placed Sue Hallstrom under arrest. . . .

Affidavit of Randy Snapp, filed May 26, 1988, at 2-3.

Contrary to the position taken by Mrs. Hallstrom, "[a] police officer is permitted to arrest without a warrant if a misdemeanor or a felony is committed in the officer's presence." *Higbee v. City of San Diego*, 911 F.2d 377, 379 (9th Cir. 1990) (*citing United States v. Watson*, 423 U.S. 411, 418, 421-24 (1976)). And, as recently recognized by the Ninth Circuit Court of Appeals, "[t]his practice has never been successfully challenged and stands as the law of the land." *Higbee v. City of San Diego*, 911 F.2d at 379 (footnote omitted). The Idaho Court of Appeals has recognized that "upon request by a police officer, a driver must manually surrender his driver's license, I.C. § 49-319 (redesignated as § 49-316), and provide proof of liability insurance, I.C. § 49-245 (redesignated as § 49-1232)." *State v. Simmons*, 115 Idaho 877, 879 n.1, 711 P.2d 541, 543 n.1 (Ct. App. 1989). Moreover, in discussing the purpose of drivers licenses and the constitutionality of the statute requiring

proof of liability insurance, the Idaho Court of Appeals acknowledged that:

> Individuals must sacrifice part of their "liberty" in order to empower a government to regulate, through passage and enforcement of laws necessary for the general public welfare. John Locke, the English Philosopher who wrote of government and freedom, said: "Where there is no law, there is no freedom."

State v. Gibson, 108 Idaho 202, 203, 697 P.2d 1216, 1217 (Ct. App. 1985) (citation omitted).

In opposition to defendants' motion, Mrs. Hallstrom boldly asserts that she would have identified herself if given the chance, "but [she] was never asked for or afforded the opportunity to provide any other form of identification." Response to Motion for Summary Judgement [sic], filed March 16, 1989, at 6. Despite such contentions, Mrs. Hallstrom's conduct suggests otherwise. In fact, Mrs. Hallstrom fails to indicate anywhere within her voluminous briefing that during the course of the stop she offered Officer Snapp an alternate form of identification. On the contrary, her briefs suggest only that, as a strong constitutionalist, Mrs. Hallstrom believes she had a right not to carry a driver's license and also a right to remain silent on the issue. As her brief indicates: "The right to free speech inherently includes the right not to speak." Memorandum in Support of Answer to Motion for Summary Judgement [sic] (Obstruction), filed April 4, 1989, at 12.

Nothing in the record suggests that Mrs. Hallstrom made any effort to cooperate with Officer Snapp or to comply with the law. On the contrary, "[b]ecause she

would not offer any degree of cooperation, [Officer Snapp] had no way to complete a citation or no belief that she would appear [in court]." Affidavit of Randy Snapp, filed May 26, 1988, at 5. Accordingly, Officer Snapp believed his "only recourse was to place her in custody for obstructing and delaying." *Id.* at 6. It is apparent that Officer Snapp had a reasonable basis to believe that Mrs. Hallstrom would not appear if she were merely issued a citation, and therefore, Mrs. Hallstrom's arrest was appropriate. *Cf. Tanner v. Heise,* 879 F.2d 572, 579 (9th Cir. 1989) (complaint alleged police officers believed defendant, who drove without a drivers license, *would appear in court*). Moreover, given that Mrs. Hallstrom later admitted not knowing whether or not the car she was driving was insured, the officer may have been subjected to civil liability for negligent entrustment if the officer had permitted Mrs. Hallstrom to drive from the scene of the stop in Garden City knowing that she failed to carry a license or proof of insurance. *See, e.g., Ransom v. Garden City,* 113 Idaho 202, 743 P.2d 70 (1987).

Mrs. Hallstrom's claims against the Garden City Defendants incorporate a challenge under the fourth amendment as it pertains to the search of her personal "papers and effects . . . and the vehicle [she] was using." Complaint, filed Dec. 22, 1987, at 11. The Fourth Amendment requires that police officers have probable cause prior to making an arrest. *Beck v. Ohio,* 379 U.S. 89, 91 (1964). In *Michigan v. DeFillippo,* 443 U.S. 31 (1979), the Supreme Court noted that probable cause for a warrantless arrest arises when the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person to believe "that the suspect has committed, is

committing, or is about to commit an offense." *Id.* at 37. Searches incident to a lawful arrest constitute a traditional exception to the warrant requirement of the Fourth Amendment. *United States v. Robinson*, 414 U.S. 218, 224 (1973).

When considering whether probable cause existed for a warrantless search, the Supreme Court established an objective standard based upon the beliefs of a reasonable officer given clearly established law and the information which he possessed. *Anderson v. Creighton*, 483 U.S. 635, 641 (1987). Although the existence of probable cause is generally a factual question, summary judgment is appropriate, where, as here, no reasonable jury could find that probable cause for the arrest did not exist. *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir. 1984). Since Officer Snapp made a lawful custodial arrest of Mrs. Hallstrom as the occupant of the automobile, he could, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile and examine the contents of any closed containers within the passenger compartment. *New York v. Belton*, 453 U.S. 454, 460 (1981). Moreover, the validity of a full custody arrest *and search incident to that arrest* for minor traffic offenses has been upheld on more than one occasion. *Gustafson v. Florida*, 414 U.S. 260, 266 (1973); *United States v. Franklin*, 728 F.2d 994, 997 (8th Cir. 1984).

In light of the foregoing, the court finds that Officer Snapp could have reasonably concluded that Mrs. Hallstrom was "wilfully resisting, delaying and/or obstructing" his attempts to discharge his duty in getting her to relinquish her driver's license, proof of insurance and/or her identity. Therefore, Mrs. Hallstrom's arrest, and the

search incident thereto, were not improper. Indeed, to have allowed Mrs. Hallstrom to drive from the scene would have been an abandonment of Officer Snapp's duties.

The Garden City Defendants maintain further that all of Officer Snapp's conduct was validly within his duties, and that Mrs. Hallstrom would have been arrested for failing to have a driver's license and failing to identify herself, whether or not she was charged with violating Section 18-705. Moreover, the Garden City Defendants point out that their involvement ended when Mrs. Hallstrom was left at the Ada County Jail, and that if Mrs. Hallstrom had simply cooperated with the booking process at the Ada County Jail, she would have been immediately released. Memorandum in Support of Motion for Summary Judgment, filed Feb. 27, 1989, at 13. Therefore, "[h]er damages, if any, were caused by her own choice not to cooperate with standard jail procedure." *Id.*

Based on the entire record, and the undisputed facts herein, this court is unable to conclude that Mrs. Hallstrom has met her burden as a nonmoving party under Rule 56 of the Federal Rules of Civil Procedure. Indeed, in response to the Garden City Defendants' motion for summary judgment, Mrs. Hallstrom and her husband essentially concede that they are "victims of their own behavior." Response to Motion for Summary Judgement [sic], filed March 16, 1989, at 19. This court finds that Mrs. Hallstrom is not entitled to recover from the Garden City Defendants pursuant to 42 U.S.C. § 1983 because her arrest was proper and any deprivation which she suffered was not the result of her speech but the *result of her conduct in failing to comply with the Idaho law.* Therefore,

the Garden City Defendants are entitled to summary judgment under 42 U.S.C. § 1983.

2. Sue Hallstrom's Claims Against the Ada County Defendants

As the facts stated above reveal, after her arrest in Garden City, Mrs. Hallstrom was taken to the Ada County Jail to be booked. She refused to submit to the booking procedure, demanding instead to be taken before a magistrate. In Idaho, a defendant is normally booked prior to arraignment before a magistrate. When Mrs. Hallstrom refused to cooperate with the booking process, she was charged by the Ada County Defendants with resisting, delaying and obstructing in violation of Idaho Code § 18-705 and was taken into custody.

With respect to her claims against the Ada County Defendants, Mrs. Hallstrom contends that she was again arrested for exercising her right to free speech. She further contends that Ada County violated her right to remain silent, her right to counsel[6], her right to be taken before a magistrate, and her right to be protected from cruel and unusual punishment.[7]

Before reaching the threshold issues raised by plaintiff's complaint, the court will address three tangential

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[6] *United States v. Gouveia*, 467 U.S. 180 (1984) (right to counsel attaches once judicial proceedings initiated).

[7] Notably, the Supreme Court has held that the Eighth Amendment protects only those who have been convicted of a crime. *Ingraham v. Wright*, 430 U.S. 651, 664 (1977).

issues which were raised by the Ada County Defendants and largely unrefuted by Mrs. Hallstrom.

First of all, the Ada County Defendants maintain that Mrs. Hallstrom's state law claims are barred because she failed to file a tort claims notice as required by the Idaho Tort Claims Act for claims against governmental entities.

The Ninth Circuit has held that where there are pendent state law claims against governmental entities, plaintiffs must comply with the procedural requirements set forth by the relevant state statutes regarding tort claims against such entities. *Ortega v. O'Connor*, 764 F.2d 703, 707 (9th Cir. 1985). Mrs. Hallstrom did not file a tort claim as specified by the Idaho Tort Claims Act. Affidavit of Thelma E. Nichols in Support of Motion for Summary Judgment, filed March 14, 1989, at 2. Accordingly, this court agrees that the Ada County Defendants are summarily entitled to judgment with respect to all state law claims.

Secondly, to the extent that Captain Mike Roberts is sued in his individual capacity, the Ada County Defendants maintain that he is entitled to summary judgment based on the decision of *Kentucky v. Graham*, 473 U.S. 159 (1985). In *Graham*, the Supreme Court addressed the distinctions between actions brought against people in their official versus personal and/or individual capacities. "Personal capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law." *Id.* at 165. "To establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." *Id.* at 166. When it comes to

raising defenses to liability, depending on the person's position, he may be able to assert "personal immunity defenses, such as objectively reasonable reliance on the existing law." *Id.* at 166-67 (citations omitted). Based on the allegations in the complaint and in light of previous decisions entered in this district (i.e., regarding detentions pending compliance with booking procedures)[8], Mrs. Hallstrom has failed to demonstrate that Captain Roberts had *no reasonable basis* for relying on existing law by detaining her until she submitted to the booking process. Consequently, this court agrees that Captain Roberts, as an individual, should be exempt from this suit and summary judgment on this issue is warranted.

Thirdly, the Ada County Defendants argue that the punitive damages allegations against Ada County should be dismissed. Pursuant to the reasoning in *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), a municipality may not be sued for punitive damages under 42 U.S.C. § 1983. Accordingly, the punitive damages allegations asserted against Ada County shall be dismissed.

The court will now turn to the crux of Mrs. Hallstrom's charges under 42 U.S.C. § 1983 against the Ada County Defendants. Subsequent to Mrs. Hallstrom's arrest by the Garden City Defendants, the Ada County Defendants were responsible for taking certain administrative steps, including subjecting Mrs. Hallstrom to the standard booking procedures. Ada County was effectively serving in a custodial capacity.

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[8] *See infra* at 22-23.

Mrs. Hallstrom contends that Ada County unjustifiably refused to bring her before a magistrate before booking her. The Constitution requires a state to provide " 'a fair and reliable determination of probable cause' by a judicial officer prior to the imposition of *'any significant pretrial restraint of liberty'* other than 'a brief period of detention to take the administrative steps incident to [a warrantless] arrest.' " *Ingraham v. Wright*, 430 U.S. 653, 698-99 (1977) (citation omitted). The Supreme Court has gone on to recognize that "[t]his *'practical compromise'* is made necessary because 'requiring a magistrate's review of the factual justification prior to any arrest . . . would constitute an intolerable handicap for legitimate law enforcement.' " *Id.* at 699 (emphasis added) (citation omitted).

In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the Supreme Court held that the Fourth Amendment requires a judicial determination of probable cause as a "condition for any significant pretrial restraint of liberty." *Id.* at 125. As the Court explained, "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest." *Id.* at 113. The Ninth Circuit Court of Appeals has construed *Gerstein* to afford police departments flexibility in processing different suspects and has noted that "administrative steps incident to a particular arrest will necessarily vary with geographical factors and with local police and court system practices as well as with innumerable factual exigencies." *Kanekoa v.. City & County of*

Honolulu, 879 F.2d 607, 611 (9th Cir. 1989) (citation omitted). Certainly, Mrs. Hallstrom's refusal to submit to the booking procedures classifies as a "factual exigency."

Ada County attempted to take the administrative steps necessary to book Mrs. Hallstrom so that she could be taken before a magistrate. The length of Mrs. Hallstrom's detention was dictated by her own refusal to take part in the county's standard administrative steps. *Cf. Bernard v. City of Palo Alto*, 699 F.2d 1023, 1025 (9th Cir. 1983) (detention for less than 24 hours without probable cause hearing would violate the Constitution in a particular case if circumstances were such that administrative steps leading to a magistrate's determination *reasonably* could have been completed in less than 24 hours)[9]. The record is clear that all Ada County wanted was to have its administrative procedures complied with. If these defendants had delayed taking Mrs. Hallstrom before a magistrate because they wanted to interrogate her, such certainly would not pass constitutional muster under *Gerstein*. *United States v. Wilson*, 838 F.2d 1081, 1085 (9th Cir.

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[9] While this court notes that the underlying facts in this case may cause one to pause, refusals to comply with the booking processes cannot be condoned. Defendants are certainly entitled to a prompt appearance before a magistrate. However, where as here, Sue Hallstrom attempted to thwart the administrative steps incident to her arrest, she cannot later declare that constitutional deprivations occurred. Indeed, if defendants were encouraged to dictate which administrative procedures they would participate in and which they would not, the booking process would be chaotic. And, if allowed, the delay fostered by such behavior would be certain to have an unfair impact on other defendants entitled to prompt completion of the administrative steps incident to their arrests.

1988). However, in this case, there is no allegation that defendants wanted to do anything more than complete the booking process. *See, e.g., Gladden v. Roach*, 864 F.2d 1196, 1198 (5th Cir. 1989) (seeking biographical information for booking purposes does not constitute interrogation or its functional equivalent in violation of the Fifth Amendment).

It is well settled in this district and elsewhere that defendants may constitutionally be required to submit to the booking process before being taken before a judicial officer. The Ada County Defendants contend that they had the right to submit Mrs. Hallstrom to the booking process. Defendants cite to several decisions from this district which hold that the booking process is constitutional. This court has previously held that "incommunicado incarceration" of a person who refuses to comply with booking procedures constitutes neither a violation of substantive or procedural due process under the fourteenth amendment. Ada County Defendants' Motion for Summary Judgment, filed March 14, 1989, Exhibit A [*Shaw v. Boise City*, Civil No. 84-1088 (D.Idaho, Order filed Sept. 12, 1985) at 2]. Moreover, it has been recognized in this district that:

> Booking procedures are necessary to the effective management and administration of a detention facility. Incarcerating a person until such time as they comply with booking procedures is a reasonable measure to ensure a legitimate government objective is achieved. It is not unreasonable nor unconstitutional for jailers to require that pretrial detainees comply with booking procedures. Similarly, it is not unreasonable for the jailers to incarcerate a person

> who might otherwise be able to post bail subsequent to booking, as a means of coercing that person into compliance with the booking procedures.

Id., Exhibit A at 2-3. *See also Gibson v. Crowell*, Civil No. 84-1475 (D.Idaho, Order filed Sept. 13, 1985 (J. McNichols)). Moreover, because it cannot be said that the actions of the Ada County Defendants were "apparently" unlawful, the defense of qualified immunity applies. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). *See, e.g., Malley v. Briggs*, 475 U.S. 335, 341 (1986) (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law").

Mrs. Hallstrom challenges the fact that she was detained for three days before being brought before a magistrate. Despite such contentions, however, the record is clear that Mrs. Hallstrom controlled her own destiny and was responsible for the very delay[10] about which she

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[10] This court is fully aware of Idaho statutes requiring that those detained by a police officer must be taken before a magistrate. Idaho Code § 49-1406 (1988) (formerly Section 49-1110) provides:

> 49-1406. When person must be taken immediately before a magistrate. – Whenever any person is halted by a peace officer for any violation of the provisions of this title not amounting to a misdemeanor and demands an immediate appearance before a magistrate, he shall be taken *without unnecessary delay* before the proper magistrate as specified in section 49-1411, Idaho Code. (emphasis added)

And, Idaho Code § 49-1407 (1988) (formerly Section 49-1111) provides, in part:

> 49-1407. When peace officer has option to take person before a magistrate. – Whenever any person is halted

complains. She simply refused to comply with the booking procedures.

Based on the foregoing, this court finds that once in the custody of the Ada County Defendants, any deprivation suffered by Mrs. Hallstrom *occurred as the result of Mrs. Hallstrom's failure to comply with the booking procedures.* Mrs. Hallstrom was told repeatedly that if she complied with the booking procedures, she could be taken before a magistrate and/or released on bail. It was Mrs. Hallstrom's refusal to submit to the booking process, not her utterances, which resulted in the citation being issued under Idaho Code § 18-705. Thus, this is one case where it definitely can be said that the prisoner held the keys to her jail cell. The Ada County Defendants are entitled to summary judgment under 42 U.S.C. § 1983.

C. Constitutionality of Idaho Code § 18-705

As set forth previously herein, Idaho Code § 18-705 provides as follows:

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by a peace officer for any misdemeanor violation of the provisions of this title and is not required to be taken before a magistrate, the person shall, in the discretion of the officer, either be given a traffic citation or be taken *without unnecessary delay before the proper magistrate* as specified in section 49-1411, Idaho Code, in the following case:

(1) When the person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court. (emphasis added)

> Resisting and obstructing officers. – Every person who wilfully resists, delays or obstructs any public officer in the discharge, or attempt to discharge, of any duty of his office or who knowingly gives a false report to any peace officer, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars ($1000), and imprisonment in the county jail not exceeding one (1) year.

In this action, among other things, Mrs. Hallstrom challenges the constitutionality of Idaho Code § 18-705 on "its face" and "as applied" to her by the Garden City Defendants and the Ada County Defendants.[11] Each constitutional theory will be addressed in turn.

1. Facial challenge to Section 18-705.

This action is based, in large part, upon the case of *City of Houston v. Hill*, 482 U.S. 451 (1987), which was decided just four days before Mrs. Hallstrom drove through Garden City with a burned out taillight.

In *Hill*, a Houston, Texas, municipal code section was declared unconstitutionally vague and overbroad because it allowed the police discretion to make arrests selectively on the basis of the content of speech. The ordinance at issue in *Hill* provided the following:

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[11] Having concluded that Mr. Hallstrom's claims are barred by the statute of limitations, this analysis focuses on Mrs. Hallstrom's constitutional challenges to Idaho Code § 18-705.]

> Sec. 34-11. Assaulting or interfering with policemen.
>
> (a) It shall be unlawful for any person to assault, strike or *in any manner* oppose, molest, abuse or *interrupt* any policeman in the execution of his duty, or any person summoned to aid in making an arrest.

Id. at 455 (*citing* Code of Ordinances, City of Houston, Texas, § 3411(a) (1984)) (emphasis added). The Houston police arrested an average of a thousand people per year using that ordinance. *Id.* at 470, n.19.

In *Hill*, the Supreme Court acknowledged that "[i]n a facial challenge to the overbreadth and vagueness of a law, a court's first task is to determine whether the enactment reaches a *substantial* amount of constitutionally protected conduct." *Id.* at 458 (*citing Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982), and *Kolender v. Lawson*, 461 U.S. 352, 359 n.8 (1983)) (emphasis added). Indeed, as it reversed a district court decision, the Fifth Circuit Court of Appeals concluded that the ordinance was "substantially overbroad" and found that "[a] significant range of protected speech and expression [was] punishable and might be deterred by the literal wording of the statute." *Id.* at 456-57 (*quoting Hill v. City of Houston*, 789 F.2d 1103, 1110 (5th Cir. 1986). Affirming that decision, the Supreme Court recognized further that since other Texas penal statutes already covered obstructive conduct that went beyond mere words, the "enforceable portion of the [Houston] ordinance deals not with core criminal *conduct*, but with speech. . . . [because it exists to] prohibit[] *verbal* interruptions of police officers." *City of Houston v. Hill*, 482 U.S. at 460-61 (emphasis added) (footnote omitted). And, since the language of the

ordinance prohibited speech that "in any manner . . . interrupt[ed]" an officer, the Court characterized the language of the Houston ordinance as "sweeping." *Id.* at 462.

Previously, this court found that Mrs. Hallstrom had standing to challenge the Garden City Defendants and Ada County Defendants under Idaho Code § 18-705. Memorandum Opinion & Order, filed May 13, 1988, at 5. Nevertheless, at this juncture, this court seriously questions whether Mrs. Hallstrom has standing to launch a facial challenge against Idaho Code § 18-705. Mrs. Hallstrom asserts that the situation presented in *Hill* is sufficiently analogous to this situation so as to provide her with standing. In *Hill*, a "gay" activist had been arrested four times for violating the Houston ordinance; the last arrest involved only a verbal "interference" with police conduct. Hill sought an order permanently enjoining enforcement of the ordinance and the Supreme Court concluded that Hill had demonstrated a "genuine threat of enforcement" of the ordinance against his future activities. *City of Houston v. Hill*, 482 U.S. at 459-60 n.7. Despite Mrs. Hallstrom's attempt to equate herself with Hill and urge this court to find that she was arrested because she was "verbally challenging police questioning," this court finds that Mrs. Hallstrom's conduct went beyond verbal challenges. Having found that Mrs. Hallstrom was properly arrested under Section 18-705 because of her unlawful conduct and not because of her speech, unlike Hill, she has not elevated herself to the role of "citizen provocateur." *Id.*[12] And even assuming, arguendo, that Mrs.

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[12] Where, as here, the plaintiff is found to have engaged in conduct which is clearly proscribed by Idaho Code § 18-705,

Hallstrom does have standing, this court finds that her facial challenge must fail.

Mr. and Mrs. Hallstrom's Motion for Summary Judgment, which was filed principally against the Ada County Defendants, reveals that more arrests occur per year under the Idaho statute than under the Houston ordinance. Motion for Summary Judgment, filed Sept. 4, 1990, at 5-6. Based on this fact, Mrs. Hallstrom urges this court to find that Section 18-705 is unconstitutional on its face. Such reasoning, however, completely discounts a critical difference between the Houston ordinance and the Idaho Statute: The Houston ordinance is essentially duplicated under similar provisions contained in the Texas Penal Code and, as applied to Mr. Hill, in the absence of a violation of law, the ordinance could be and was being used to arrest *solely* for the exercise of free speech.

Clearly, "[c]riminal statutes must be scrutinized with particular care . . . those that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application." *City of Houston v. Hill*, 482 U.S. at 459 (citations omitted). In "scrutinizing" the language of Section 18-705, this court fully embraces the concept recognized in *Hill* that: "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we

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Mrs. Hallstrom cannot complain of the vagueness of the law as applied to the conduct of others. *United States v. Doremus*, 888 F.2d 630, 634 (9th Cir. 1989), *cert. denied*, ___ U.S. ___, 112 L.Ed.2d 772 (1991) (*citing Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95 (1982)).

distinguish a free nation from a police state." *Id.* at 462-63. However, the Houston ordinance is further distinguished from Idaho Code Section 18-705, since it does not use the term "interrupt" and, on its face, the statute does not implicate mere "speech" or reach a "substantial" amount of constitutionally protected conduct.

This court would expect that based on reasoning contained in *Hill*, officers operating under an obstruction of justice statute in Idaho, and throughout the nation, would certainly comply with the following directive: "[I]n the face of verbal challenges to police action, officers and municipalities must respond with restraint." *City of Houston v. Hill*, 482 U.S. at 471. Indeed, a "certain amount of expressive disorder not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive." *Id.* at 472.

Yet, in ruling in this area, courts must be mindful that facial challenges are not countenanced in the ordinary course because "it can seldom be appropriate . . . to exercise any such power of prior approval or veto over the legislative process." *Younger v. Harris*, 401 U.S. 37, 53 (1971). Moreover, where the courts of a state could adopt a construction of a statute that eliminates the constitutional defects, federal courts should defer. *IDK. Inc. v. Clark County*, 836 F.2d 1185, 1191 (9th Cir. 1988) (*citing Time. Inc. v. Hill*, 385 U.S. 374, 397 (1967); *Harrison v. NAACP*, 360 U.S. 167, 176-77 (1959)).

This court notes that unlike the Houston ordinance which had not been subjected to judicial review, the Idaho appellate courts have had an opportunity to review the language of Idaho Code § 18-705, and such review has

taken place *since* the decision handed down in *Houston v. Hill. See, e.g., State v. Wilkerson,* 114 Idaho 174, 755 P.2d 471 (Ct. App.), *aff'd* 115 Idaho 357, 766 P.2d 1238 (1988). Although the circumstances presented in the *Wilkerson* case differ markedly from the case at bar, it is significant that the appellate courts of the State of Idaho did not strike down Idaho Code § 18-705 as facially overbroad or vague.[13]

Instead, in analyzing Section 18-705, the Idaho Court of Appeals acknowledged that "an individual cannot be convicted of a crime for failing to obey a police officer's command if that command itself is violative of the United States Constitution." *State v. Wilkerson,* 114 Idaho at 178, 755 P.2d at 475 (citations omitted). The court held that "where an individual refuses to obey an order or obstructs an act of a public officer which is contrary to law, be it a statute or constitution, that individual does not violate I.C. § 18-705." *Id.* at 180, 755 P.2d at 477. In reaching this conclusion, the court interpreted the word "duty" as used in Section 18-705 "to encompass only those lawful and authorized acts of a public officer." *Id.*

Thus, if Officer Snapp was not acting within his duty when he demanded that Mrs. Hallstrom present a driver's license and proof of insurance or if such demand could be considered violative of the state laws or the Constitution, Mrs. Hallstrom could not have been

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[13] And having compared the language contained in the statute at issue in *Hill* to the Idaho statute, it seems reasonable that Idaho courts would not strike down that statute despite the disposition in *Hill.*

charged under Section 18-705. Correspondingly, if requiring an arrestee to submit to booking procedures prior to taking them before a magistrate violated state law or the Constitution, then Mrs. Hallstrom could not be charged with failing to submit to the booking process under Section 18-705. In this case, it cannot be said that Officer Snapp and the Officers at Ada County Jail were acting outside their duties. Therefore, Mrs. Hallstrom's disobedience of these officers violated Idaho Code § 18-705. *Cf. State v. Wilkerson*, 114 Idaho at 181, 755 P.2d at 478 (Burnett, J., dissenting).

Under our constitutional system, "courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick v. Oklahoma*, 413 U.S. 601, 610-11 (1973) (citation omitted). Absent a finding that Idaho Code § 18-705 implicates a "substantial amount of constitutionally protected conduct," this court finds that striking down Section 18-705, based on a facial vagueness review, would be improper. *Cf. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. at 494.

Facial invalidation is "strong medicine" which should be used "sparingly and *only as a last resort.*" *Broadrick v. Oklahoma*, 413 U.S. at 613. Based on the record, this court concludes that Section 18-705 does not reach a sufficient amount of activities protected by the Constitution to justify a dose of that medicine.[14] Accordingly,

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[14] Notwithstanding a finding that Mrs. Hallstrom's "facial challenge" fails, this court does not go so far as to hold that the statute is completely incapable of unconstitutional application. Therefore, this decision *should not* be considered to immunize

summary judgment in favor of defendants appears appropriate.

2. "As Applied" Challenge to Idaho Code § 18-705.

Pursuant to the reasoning in *City of Houston v. Hill*, 482 U.S. 451 (1987), Mrs. Hallstrom also requests this court to find Idaho Code § 18-705 unconstitutional as applied to her. To successfully challenge a statute "as applied," Mrs. Hallstrom must demonstrate that although the application of the statute is sometimes valid, its application was not valid under the circumstances presented in this case. However, as much as Mrs. Hallstrom urges this court to conclude that the actions of the defendants violated her right to free speech, this court is unable to do so.

Having previously found, as a matter of law, that Mrs. Hallstrom's arrests by the Garden City Defendants and the Ada County Defendants were lawful, this court must also conclude that Mrs. Hallstrom did not have a constitutional right to immediate liberty. *Higbee v. City of San Diego*, 911 F.2d 377, 379 (9th Cir. 1990). The Ada County Defendants were permitted to detain her, whether a misdemeanor arrestee or a felony arrestee, for the usual post-arrest procedures, including booking. *Id.* Moreover, the Ninth Circuit Court of Appeals has expressly acknowledged that "[t]o require that those likely to continue to break the law be processed in a

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Section 18-705 from future challenges to its application. *Cf. IDK, Inc. v. Clark County*, 836 F.2d 1185, 1191 (9th Cir. 1988).

custodial manner certainly seems rational." *Id.* "Indeed, it would border on the irrational to require the release in the field of those arrested for a public offense who showed promise of continuing immediately to engage in their illegal conduct." *Id.* at 379-80. Given Mrs. Hallstrom's statement at the time of the stop by Officer Snapp and her continuing claims that she is not required to carry a driver's license, the reasoning in *Higbee* militates a finding that Mrs. Hallstrom's arrest was warranted and proper.[15]

With respect to the Garden City Defendants as well as the Ada County Defendants, Mrs. Hallstrom has failed to establish that merely her speech, and not her conduct, precipitated her arrest and citation under Section 18-705. *United States v. Austin*, 902 F.2d 743, 744 (9th Cir. 1990). On the contrary, her conduct in failing to present a driver's license and failure to present proof of insurance

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[15] To the extent Mrs. Hallstrom challenges the municipal policies of Ada County and Garden City in terms of allowing their officers to arrest and detain persons pursuant to Idaho Code § 18-705, Mrs. Hallstrom fails to state a viable constitutional claim. True, in a case challenging the validity of policies related to arrests for misdemeanor traffic offenses, the Ninth Circuit Court of Appeals has acknowledged that a municipality may be found liable under Section 1983, where a plaintiff proves that a municipal employee was not adequately trained and that the constitutional wrong was caused by a failure to train. *Tanner v. Heise*, 879 F.2d 572, 582 (9th Cir. 1989) (citation omitted). However, based on the record, Mrs. Hallstrom has given no basis upon which this court can conclude that there existed in Garden City or Ada County any inadequacy of training which amounted to " 'deliberate indifference' to the rights of persons with whom the [defendants' employees came] into contact." *Id.* at 583 (citation omitted).

as well as her conduct in failing to participate in the booking procedures, prompted charges under the challenged statute. Mrs. Hallstrom can produce no authority which stands for the proposition that, once validly stopped, an individual has a constitutional right not to present a driver's license or proof of insurance when demanded by a police officer, nor that an individual, once arrested, has a constitutional right to refuse to comply with the booking process incident to an arrest.

The Ada County Defendants appropriately state that Mrs. Hallstrom has mischaracterized the rights she attempts to assert in this lawsuit as rights of free speech arising under the First Amendment. Indeed, Mrs. Hallstrom has not cited any authority which suggests that the Ada County Defendants did not have a right to book her or that she had a constitutional right to resist being booked. And, with respect to the delay associated with bringing Mrs. Hallstrom before a magistrate, the Ada County Defendants maintain that any delay was associated with Mrs. Hallstrom's refusal to be booked. As previously shown, Mrs. Hallstrom resisted the booking process and was issued a citation for her refusal. Therefore, this court finds that Idaho Code § 18-705 was constitutionally applied to Mrs. Hallstrom.

In summary, as much as Mrs. Hallstrom would like this court to strike down Idaho Code § 18-705, under an analysis similar to *Houston v. Hill*, based on the undisputed facts and the applicable law, this court finds that such would not be appropriate.

D. The Summary Judgment Standard

Summary judgment is appropriate only if no genuine issues of material fact exist. *Amaro v. Continental Can Co.*, 724 F.2d 747, 749 (9th Cir. 1984). This court must view all facts in the record and all inferences drawn from them in the light most favorable to the Hallstroms. *Wood v. Ostrander*, 879 F.2d 583, 586-87 (9th Cir. 1989), *cert. denied*, ___ U.S. ___, 112 L.Ed.2d 305 (1990). In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), the Supreme Court noted that summary judgment is not appropriate "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." However, "the adverse party 'must set forth specific facts showing that there is a genuine issue for trial.'" *Id.* at 250. Additionally, the court noted that "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* at 248. "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* If the *factual context renders them implausible*, a party must present more persuasive evidence to support the claim than would be otherwise necessary. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

It is well settled that a party, in defending against a motion for summary judgment, may not simply rest upon the bare pleadings.[16] As the Ninth Circuit stated in *United*

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[16] *See also* Fed. R. Civ. P. 56(e), which provides in part: When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's

States v. Allen, 578 F.2d 236, 237 (9th Cir. 1978): "In order successfully to oppose a motion for summary judgment, a party may not rely solely on conclusory allegations in the pleadings . . . but must, instead, offer some evidence at least outlining a factual dispute" (citations omitted). Rule 56(e) required Mrs. Hallstrom to go beyond the pleadings and by affidavits, or by depositions, or by answers to interrogatories or admissions on file designate specific facts showing there is an issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The mere assertion that some facts remain disputed is insufficient to survive a motion for summary judgment. There must be sufficient evidence upon which a jury could reasonably find for the plaintiff.

Based on the circumstances presented in this case, together with the governing law, a reasonable jury could not return a verdict in favor of the Hallstroms. Therefore, pursuant to the standard delineated above, summary judgment in favor of the defendants is warranted.

E. Conclusion

This court notes that plaintiffs seem to consider themselves "constitutionalists" who are "extremely active

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response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

U.S.C.S. Court Rules, Federal Rules of Civil Procedure, Rule 56(e) (Law. Co-op. 1987 & Supp. 1990).

and vocal in pointing out abuses in government." Complaint, filed Dec. 22, 1987, at 8. The Hallstroms have expended much personal effort to establish constitutional violations in this case. Mindful of these efforts and the fact that plaintiffs are not formally trained in the law, this court has made every effort to construe the pleadings liberally and has given careful consideration to the arguments of these pro se litigants. *See Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc).

Notwithstanding such consideration, however, based on the applicable law and the circumstances presented in this case, this court finds that Mr. and Mrs. Hallstrom were not deprived of any rights secured by the Constitution and laws, and therefore, they are not entitled to any type of relief – declaratory, monetary or otherwise. *Baker v. McCollan*, 443 U.S. 137, 140 (1979). Summary judgment in favor of the defendants is warranted, and Mr. and Mrs. Hallstrom's Section 1983 action must be dismissed.

III. ORDER

Based on the foregoing and the court being fully advised in the premises,

IT IS HEREBY ORDERED that the Garden City Defendants' Motion for Summary Judgment should be, and is hereby, GRANTED.

IT IS FURTHER ORDERED that the Ada County Defendants' Motion for Summary Judgment should be, and is hereby, GRANTED.

IT IS FURTHER ORDERED that plaintiffs' Motion for Summary Judgment, should be, and is hereby, DENIED, and that this action shall be DISMISSED.

DATED this 3rd day of May, 1991.

/s/ Harold L. Ryan
HAROLD L. RYAN
UNITED STATES
DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

BILL MENDOZA, Plaintiff, v. DON LARSON, CHUCK PALMER, MIKE ROBERTS, PAT COWLES, RON LATTON, LOREN WELLMAN, and All Unknown Others, Defendants.	CIVIL NO. 85-1003 ORDER (Filed Dec. 27, 1985)

On December 23, 1985, the court heard oral argument on Defendant Larson's motion for reconsideration and the Ada County defendants' Motion for Summary Judgment. For the reasons stated from the bench, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that Defendant Larson's motion for reconsideration should be, and is hereby, DENIED.

IT IS FURTHER ORDERED that the Motion for Summary Judgment of Defendants Palmer, Roberts, Cowles, Latton, and Wellman should be, and is hereby, GRANTED in all respects. All claims against those defendants should be, and are hereby, DISMISSED.

IT IS FURTHER ORDERED that a jury trial in this matter on the remaining claim against Defendant Larson

is set to commence April 2, 1986, at 9:30 a.m., in Boise, Idaho. Said jury trial is expected to run one (1) day.

DATED this 29 day of December, 1985.

/s/ Harold L. Ryan
HAROLD L. RYAN
UNITED STATES
DISTRICT JUDGE

APPENDIX F

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Gregory W. McAleenan
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Attorneys for Defendants, E. C. Palmer, Lt. Robert Hope, Sgt. Ian Ishiama, Sgt. Walter Scharf, Cpl. Richard DeLeonard, Cpl. Patrick Cowles, Paul Carrera, Randy Folwell, Dieter Bayer, Mike Vajda, Scott Campbell and Ada County

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

STEPHEN P. GIBSON, Plaintiff, vs. RAY CROWELL, individually and as a police officer, Boise City, Idaho, JOHN CHURCH, individually and as Chief of Police, Boise City, Idaho, BOISE CITY, E. C. PALMER, individually and as sheriff, Ada County, Idaho, LT ROBERT HOPE, individually and as a deputy sheriff, Ada County, Idaho, SGT IAN ISHIAMA, individually and as a	Civil No. 84-1475 ORDER (Filed Sept. 13, 1985)

deputy sheriff, Ada county, Idaho, SGT WALTER SCHARF, individually and as a deputy sheriff, Ada County, Idaho, CPL FIRST NAME UNKNOWN DeLEONARD, individually and as a deputy sheriff, Ada County, Idaho, CPL PATRICK COWLES, individually and as a deputy sheriff, Ada County, Idaho, PAUL CARRERA, individually and as a deputy sheriff, Ada County, Idaho, RANDY FOLWELL, individually and as a deputy sheriff, Ada County, Idaho, DONALD FISHER, individually and as a deputy sheriff, Ada County, Idaho, FIRST NAME UNKNOWN BORAH, individually and as a deputy sheriff, Ada County, Idaho, DIETER BAYER, individually and as a deputy sheriff, Ada County, Idaho, MIKE VAJDA, individually and as a deputy sheriff, Ada County, Idaho, JOHN DOE #1, individually and as a deputy sheriff, Ada County, Idaho, JOHN DOE #2, individually and as a deputy sheriff, Ada County, Idaho, JOHN DOE #3, individually and as a deputy sheriff, Ada County, Idaho, JOHN DOE #4, individually and as a deputy sheriff, Ada County, Idaho, SCOTT CAMPBELL, individually and as a deputy county prosecuting attorney, Ada County, Idaho, and ADA COUNTY,

Defendants.

The Motion to Dismiss of the Defendants, E. C. Palmer, Lt. Robert Hope, Sgt. Ian Ishiama, Sgt. Walter Scharf, Cpl. Richard DeLeonard, Cpl. Patrick Cowles, Paul Carrera, Randy Folwell, Dieter Bayer, Mike Vajda, Scott Campbell and Ada County, having regularly come before the Court on September 9, 1985, the Court having reviewed the memoranda on file and heard argument, and good cause appearing therefor,

IT IS ORDERED AND THIS DOES HEREBY ORDER that Defendants, E. C. Palmer, Lt. Robert Hope, Sgt. Ian Ishiama, Sgt. Walter Scharf, Cpl. Richard DeLeonard, Cpl. Patrick Cowles, Paul Carrera, Randy Folwell, Dieter Bayer, Mike Vajda, Scott Campbell and Ada County's, Motion to Dismiss is granted in all respects on the basis that Plaintiff's detention in the Ada County Jail resulted from Plaintiff's own unjustified refusal to submit to standard booking procedures and not from any unconstitutional act or omission by the Defendants.

DATED this 13th day of September, 1985.

RAY McNICHOLS
RAY McNichols
U. S. District Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PEGGY SHAW, Plaintiff, v. BOISE CITY, et als., ADA COUNTY, et als., DAVID M. SMITH, CLIFFORD MORGAN, CHARLES PALMER, WAYNE P. WILLIS, LARRY RICHARDS, LINDA EVANS, RICHARD DeLEONARD, JOHN(s) DOE ONE THROUGH TEN, JANE(s) DOE ONE THROUGH TEN, Defendants.	CIVIL NO. 84-1088 ORDER (Filed Sept. 12, 1985)

Defendants Ada County, Charles Palmer, Larry Richards, Linda Evans, and Richard DeLeonard, and Defendants Boise City, David Smith, and Clifford Morgan have each moved from summary judgment on all of plaintiff's claims. The court heard oral argument on defendants' Motions for Summary Judgment on September 4, 1985. Having considered the arguments of counsel and the evidentiary record before the court, the court makes the following findings.

A. Claims Against Ada County and Boise City

All claims against Ada County and Boise City, except one, should be dismissed on the grounds that the Complaint fails to allege the conduct complained of was executed pursuant to government policy or custom as required by the United States Supreme Court's decision in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). The booking procedure employed by the Ada County Sheriff's Department is, by the defendants' own admission, official county policy. Consequently, *Monell* does not mandate dismissal of those claims which arise from Shaw's failure to submit to the booking procedures.

However, the booking procedures utilized by Ada County and the methods used to enforce those procedures are not unconstitutional. There is no question that the right to counsel does not arise as early as the time of booking. *See United States v. Gouveia*, ___ U.S. ___, 81 L.Ed.2d 146 (1984). Nor does "incommunicado incarceration" of a person who refuses to comply with booking procedures constitute a violation of either substantive or procedural due process under the fourteenth amendment. Booking procedures are necessary to the effective management and administration of a detention facility. Incarcerating a person until such time as they comply with booking procedures is a reasonable measure to ensure a legitimate government objective is achieved. It is not unreasonable nor unconstitutional for jailers to require that pretrial detainees comply with booking procedures. Similarly, it is not unreasonable for the jailers to incarcerate a person who might otherwise be able to post

bail subsequent to booking, as a means of coercing that person into compliance with the booking procedures.

B. Section 1985 Claims

The plaintiff's claims based upon 42 U.S.C. § 1985(2) and (3) should be dismissed as they fail to allege racial or otherwise class-based discriminatory intent.

C. Ada County Defendants Charles Palmer, Larry Richards, Linda Evans, and Richard DeLeonard

Plaintiff's allegations against these Ada County defendants fall into three basic categories. First, she alleges confinement without just cause based upon her failure to comply with booking procedures. Second, plaintiff contends she was entitled to the presence and advice of counsel at her interview with the jail legal representative; and third, she alleges she was denied proper medical care during her incarceration. As noted previously, Shaw's confinement for failure to comply with booking procedures does not constitute constitutional deprivation, nor does the record establish that the jail officials demonstrated a deliberate indifference to any illness or injury the plaintiff may have suffered. Indeed, it appears from the record that Shaw's medical needs were adequately provided for.

With regard to Shaw's argument that she was entitled to the presence and advice of counsel during an interview with jail legal representatives, the court finds that even if the interview could be considered a custodial interrogation requiring *Miranda* rights (the record does not reflect

whether these rights were given and, if so, whether they were waived), the court finds that the plaintiff can establish no damage which resulted from any such a denial. Consequently, this claim must also be dismissed. In addition, none of the alleged constitutional deprivations constitutes the violation of clearly established rights of which a reasonable person would have known. Hence, these defendants' are shielded by a qualified good-faith immunity. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

D. Boise City Defendants David Smith and Clifford Morgan

Plaintiff makes two claims against these arresting officers. Shaw claims she was falsely arrested because there was no probable cause for the arrest, and second, that the officers used excessive force during the arrest and during her transportation to the jail. There is no dispute of fact that the plaintiff did not have current license plate tags, and therefore, the police had probable cause to stop and arrest Shaw on those charges. The constitutional claim of false arrest must be dismissed.

The affidavits submitted by the arresting officers detailing the circumstances surrounding the stop and arrest of Shaw are essentially uncontroverted. While Shaw has alleged that the officers used more force than was necessary, it appears from the record that the officers acted reasonably in attempting to stop Shaw's moving vehicle and in removing her from that vehicle. Shaw's due process claim that excessive force was used must also be dismissed.

Shaw has appeared pro se throughout this case. The Complaint and Proposed Amended Complaint are inartfully drafted and the court has made considerable effort in attempting to formulate all possible constitutional claims which might be presented based upon the factual allegations made in either pleading. The court was unable to formulate any such claims which might withstand the defendants' Motions for Summary Judgment.

Based upon the foregoing and for the reasons stated from the bench,

IT IS THEREFORE ORDERED that Defendants Ada County, Charles Palmer, Larry Richards, Linda Evans, and Richard DeLeonard's Motion for Summary Judgment should be, and is hereby, GRANTED.

IT IS FURTHER ORDERED that Defendants Boise City, David Smith and Clifford Morgan's Motion for Summary Judgment should be, and is hereby, GRANTED.

IT IS FURTHER ORDERED that all claims against all defendants should be, and are hereby, DISMISSED.

DATED this 12 day of September, 1985.

/s/ Harold L. Ryan
HAROLD L. RYAN
UNITED STATES
DISTRICT JUDGE

Supreme Court, U.S.
FILED
NOV - 5 1993
OFFICE OF THE CLERK

(2)

No. 93-455

In The
Supreme Court of the United States
October Term, 1993

VAUGHN KILLEEN, MIKE ROBERTS AND ADA COUNTY, IDAHO

Petitioners,

v.

SUE HALLSTROM,

Respondent.

Brief in Opposition
to a Petition for a Writ of Certiorari
To the United States Court of Appeals
for the Ninth Circuit

BRIEF FOR RESPONDENT

Sue Hallstrom
In Propria Persona
PO Box 9411
Boise, ID 83707

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STATEMENT OF THE CASE

Factual Background

Petitioners' "Statement of the Case" contains factual errors and misrepresentations, as does the remainder of the Petition. For example, Petitioners state Hallstrom was arrested for "resisting and obstructing" when in fact the charges were "obstructing and delaying" and Hallstrom submits that there is a vast difference between the two, that the arrest was precipitated on conversation which the officer did not like, that no resistance was offered, and none was alleged in any pleadings prior to this Petition. It should also be noted that all charges were later dropped.

Petitioners also state Hallstrom's refusal to submit to booking procedures was based upon her "belief that her first allegiance is to Higher Moral Law..." Contrary to this, from the first time booking was offered to her at the jail, Hallstrom told her captors that she would not submit to the booking process until they obtained a court order, which they promised to do, but never did. In her repeated objections to the booking process, she never once refused based on a "Higher Moral Law," she refused based upon the law of the state and the law of the land, as Hallstrom knew, for example, that Idaho Code 19-625 requires a court order before the taking of fingerprints, and also that in *Davis v. Mississippi,* 384 U.S. 436, 728, this court said:

> "For this same reason, the general requirement that the authorization of a judicial officer be obtained in advance of detention would seem not to admit of any exception in the fingerprinting context."

Petitioners state Hallstrom "refused until June 24, 1987, at which time she submitted to the booking process." The implication is that Hallstrom held out until June 24, and then

arbitrarily decided to comply, but this was not the case. Hallstrom never "refused" but continued to state she would submit when a proper court order was presented to her. On June 24, 1987, a court order was presented to Hallstrom and she submitted to booking.

Petitioners then tell the court that Hallstrom was not the first person "who refused standard booking procedures ... based upon their 'inalienable right to not submit to man-made law.'" Again, at the jail, Mrs. Hallstrom based her refusal on the laws of the state and the laws of the land which is well documented in her pleadings. This statement, like others throughout the Petition, seems to be a deliberate attempt to mislead the Court as to the facts of this case.

In the other local District Court cases (Shaw, Gibson & Mendoza) found at Petitioners' Appendices E, F, and G, those refusals were also based upon law, not on some "inalienable right to not submit to man-made laws," and the Plaintiffs' arguments for noncompliance in those cases were based upon man-made law -- not esoteric law.

ARGUMENT FOR DISALLOWANCE OF WRIT

Petitioners ask that their writ be granted on two reasons. First so that the court could decide what is "clearly established law" for purposes of qualified immunity. Hallstrom contends that in this case the law was clearly established.

Secondly so that the court can consider whether the 9th Circuit Panel's legal analysis is consistent with this court's precedents which instruct that the law to be considered in determining whether or not a right has been violated must be particularized. However, their arguments are based upon the actual title of their second argument: "THE NINTH CIRCUIT PANEL ERRED IN ITS LEGAL ANALYSIS IN DETERMINING WHETHER ROBERTS WAS ENTITLED TO QUALIFIED IM-

MUNITY." In this regard Hallstrom contends that the Panel did not err.

I

THE NINTH CIRCUIT PANEL DID NOT ERR WHEN IN DETERMINING CLEARLY ESTABLISHED LAW IT REJECTED APPLICABLE LOCAL UNITED STATES DISTRICT COURT PRECEDENT

Petitioners' argument hinges upon the question, what is "clearly established law" in this case? Petitioners contend that the Panel erred in refusing to consider District Court opinions and contend that U.S. District Court decisions made in 1985 are "clearly established law" and should take precedent over Ninth Circuit and this court's decisions.

Then Petitioners point out how this court has, in the past, considered United States District Court decisions in "determining whether there was clearly established law." It seems all too obvious that this court can reach down to District Courts and use their decisions as a basis to determine "whether there was clearly established law" when those decisions are valid decisions. But it is difficult to believe that this court would use District Court decisions to determine "whether there was clearly established law" when those decisions are invalid or flawed.

In this regard, the 9th Circuit Panel did, in fact, consider the Idaho District Court opinions and found them lacking when they stated "The district court's holding that the right to book a person lawfully arrested justified detaining her without limit (and without access to a magistrate to pass on the lawfulness of the arrest) in order to 'coerce' compliance with booking, Order Granting Defendants' Motions for Summary Judgment

at 23, contained in ER, is simply wrong." Petitioners' writ, App. 20

In addition, The 9th Circuit Panel also said of the local District court cases (Shaw, Gibson & Mendoza, found at App. E, F & G of Writ, App. 72, 74, 77):

> "In neither case (Shaw & Gibson) did the district court consider Gerstein or analyze the Ada County defendants' actions in light of clearly established Ninth Circuit and Supreme Court law. While at one level it may seem harsh not to allow law enforcement officers to rely on local judicial officers' opinions, the Supreme Court requires what is essentially an artificial test, one that specifically looks to objective, not subjective, reasonableness. A judicial officer's misjudgment will not obviate or excuse another official's obligation to act with objective reasonableness....Under the objective test, an official is charged with knowledge of controlling Supreme Court and Ninth Circuit precedent. This is not a case where the underlying facts are unclear or in dispute." (Writ, App. 26)

Petitioners argue that the 9th Circuit Panel disregarded *Anderson* (Writ, p. 6) which is a U.S. Supreme Court case, so it is obvious that Petitioners have a double standard: they want to quote high court cases, but want the 9th Circuit Court to look to District Court precedent. In this regard it is somewhat ironic that Petitioners list seven court cases in their "Table of Authorities," six of which are U. S. Supreme Court cases and one 9th Circuit opinion -- and no District Court cases. If Petitioners feel so strongly about District Court Cases, why do they now rely on higher court decisions?

Petitioners argue that since this court has reached down to District Courts to determine "whether there was clearly established law," then they conclude that "it is inconsistent with that purpose to ask government officials to disregard existing

United States District Court cases which specifically sanction their conduct."

Petitioners are asking the court to sanction their policy of picking and choosing what court and what cases suit their fancy, regardless of whether or not those decisions are consistent with higher court decisions. Hallstrom wonders whether the Sheriff would be very sympathetic with a deputy who did something in violation of his personal written orders, and defended his action based upon something a sergeant had said. This is the old and worn Nurembourg defense: "I was just doing my job when I turned the gas valves." These arguments did not work then, they didn't work for Lieutenant Calley of Vietnam fame, and they cannot be allowed to work in this case.

Petitioners then emphasize the importance of the local District Court's decisions to Petitioners' defense, and then give us a brief history of the three cases. But what is amazing is that they actually quote the local court as follows:

> "...Nor does 'incommunicado incarceration' of a person who refuses to comply with booking procedures constitute a violation of either substantive or procedural due process...It is not unreasonable for the jailers to incarcerate a person who might otherwise be able to post bail subsequent to booking, as a means of coercing that person into compliance with the booking procedures." (Writ, Appendix G, App. 78)

If it is not unreasonable to hold Mrs. Hallstrom in jail until she complies with their internal procedures (which they said they would do whether it was days, weeks, months, years, or life), then it could be argued that it is not unreasonable to hold Mrs. Hallstrom in jail until she submits to rape.

Such arguments are absurd, and it was precisely because of this obvious and flagrant violation of Mrs. Hallstrom's rights that the Ninth Circuit Panel stated (as previously quoted):

> "The district court's holding that the right to book a person lawfully arrested justified detaining her without limit (and without access to a magistrate to pass on the lawfulness of the arrest) in order to "coerce" compliance with booking, Order Granting Defendants' Motions for Summary Judgment at 23, contained in ER, is simply wrong." Writ, App. 20

But the Panel went on to state:

> "While the booking process itself (and its attendant fingerprinting and photographing) may be entirely proper, it does not trump the Fourth Amendment proscription against over-long detention based solely on a probable cause determination made by the arresting officer." Writ, Supra

Before continuing to analyze Petitioners' last argument on this subject, the issue of what is "clearly established law" must be addressed. In addressing this subject there are two standards to consider: 1) the federal standard, and 2) the state standard.

The Federal Standard

Gerstein (decided in 1974), in discussing pretrial custody stated:

> "Whatever procedure a State may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Gerstein v. Pugh,* 420 U.S. 125, 1974)

The Panel, in addressing the federal standard, pointed out that:

> "Recently the Supreme Court indicated that a jurisdiction which 'provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*.' County of Riverside v. McLaughlin, 111 S. Ct. 1661, 1670 (1991)." (Writ, App. 16)

But regardless of the 48-hour rule and no matter how "promptness" is defined under *Gerstein,* the willingness of the U.S. District Court and County officials to hold Mrs. Hallstrom indefinitely in an "incognito incarceration" status until she complied with the booking process, is more than unreasonable -- it is shocking to the senses -- it is ad absurdum.

Nevertheless, Petitioners would have us believe that it is reasonable for an official to rely upon local U.S District Court decisions when qualified immunity is asserted and thus need not consider higher court decisions. This argument is likewise unreasonable and absurd.

According to the Internal Revenue Service, it is reasonable for them not to be able to answer your tax questions, yet it is unreasonable when we, not knowing the same answer, fail to properly fill out a tax form.

According to the BATF, it is reasonable that they cannot answer specific questions pertaining to gun laws, yet it is unreasonable when we, not knowing the same law, violate gun laws.

From Mrs. Hallstrom's position it was unreasonable to expect her to know that when she failed to file a charge against officials in compliance with state procedural requirements, all state law claims are time-barred, especially when that ruling is in an obscure court case and cannot be found in any statute. However it was reasonable, from the perspective of the 9th

Circuit and Petitioners, to argue and decide against her state claims based upon a 9th Circuit opinion.

Since Petitioners have no problem with Hallstrom being held to the 9th Circuit's ruling on this subject, they should have no problem understanding that *Gerstein* and other higher court cases are controlling rather than decisions of the local District Court.

By their logic Rosa Parks should still be riding in the back of the bus in Birmingham, Alabama, because the local District Court said it was all right. And if their logic should be adopted, why even bother having circuit courts of appeal or a Supreme Court for that matter.

Thus, if Hallstrom, who is just a citizen, can be held to the ruling of some obscure court case, then it is only reasonable that public officials who are supposed to have a knowledge of the law be held to higher rulings.

The State Standard

The Federal courts have not been dogmatic in defining "promptness," allowing states some degree of flexibility based upon their particular situations and problems, but this court found it necessary to establish a 48-hour rule in *McLaughlin.* When states establish standards they cannot broaden the federal standard but they can narrow them. Thus the Federal standard of 48 hours is met by a state which complies in 40 hours, 36 hours, 24 hours, etc.

While Idaho state claims have been barred in this case Idaho law becomes important in determining what is "settled law" and to determine what should be reasonable to an officer, because if the Idaho standard is narrower than the Federal standard, then Petitioners' claims are invalid.

The 9th Circuit understood the narrowness of Idaho's standard and on page 3585 (Writ, App. 14) of their decision they stated: "The discretion is very narrow: the arrested person either must be released or taken before a magistrate." It should also be pointed out that nowhere in the Idaho Code is discretion given to arresting officers to take anyone to jail. Nine times the Idaho Code addresses officers' duties in this regard and they all say the same thing -- take the individual "immediately" or "without unnecessary delay" before a magistrate (see Appendix).

The 9th Circuit also took into consideration the Idaho Criminal Rules of Procedure, which address taking an individual before a magistrate, quoting the rule as follows: "In no event shall delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays." (Writ, App. 14, footnote 7)

In addition, according to the *Ada County Jail Handbook*, if you are brought to jail prior to 6 a.m., you will appear before a magistrate at 3 p.m. that same day:

> "ARRAIGNMENT: All persons held in the jail will normally attend arraignment at the earliest regularly scheduled arraignment time available. Arraignments are conducted Monday through Friday at 3:00 p.m. All persons booked into the jail before 6:00 a.m. will attend arraignment on that day. Persons booked into the jail after 6:00 a.m. will attend arraignment the next day." Ada County Jail Inmates' Handbook, p. 12

According to the Sheriff's own written policy, he has established an in-house nine-hour rule for those booked prior to 6:00 a.m. In addition, the Sheriff's policy, as written in the Handbook quoted above, provides that if one is booked after 6:00 a.m., he will not be arraigned until after 3:00 p.m. the

following afternoon, establishing a 33-hour rule, which is in contravention of the 24-hour rule established by the judiciary.

In any event, it is only reasonable to expect that the Sheriff and the jail commander are fully aware of rules that they have written, and based upon these rules, they should have known that to incarcerate Hallstrom for four days without taking her to a magistrate was unreasonable.

This brings us to Petitioners' final argument on this subject. They argue that "when Roberts was confronted with Hallstrom's arbitrary refusal to submit to standard booking procedures, the decision to detain her was not made in a vacuum. It was made on existing law."

Once again we find Petitioners misleading the court with their choice of words. Hallstrom did not "arbitrarily" refuse to submit but demanded a court order, which she considered appropriate since no Idaho law requires that she submit to booking, and because she had not been taken before a magistrate as demanded. However, upon presentation of a court order, she did submit. It might also be stated that this was 6 days after being arrested and two days after being released on bail by a magistrate, but even in spite of being released on bail she continued to be held in jail.

It has been clearly shown that "settled law" in regards to taking an arrested person before a magistrate in Idaho is much narrower than the Federal 48-hour standard and agrees more closely with the word "promptness" as found in *Gerstein.* It is only reasonable to expect Idaho officials to be knowledgeable of Idaho law on the subject whether or not they plead ignorance of the Federal standard. It is also reasonable to expect officers to comply with state law and to have taken Hallstrom before a magistrate "immediately" or "without unnecessary delay." Since idaho law is so well established and

clear on the subject, it is reasonable to expect Idaho officials to know that holding Mrs. Hallstrom in "incognito incarceration" until she complied with the booking process was unreasonable.

In conclusion, if officers had met state standards in taking Mrs. Hallstrom before a magistrate, they would also have complied with Federal standards. Therefore, Petitioners' arguments as to what is "clearly established law" are frivolous, without foundation or merit.

As stated in *Gerstein:* "Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgement evaporate....When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty." 420 U.S. 114

Thus this Court should uphold its tradition of securing the rights of individuals against the "lawless conduct" of government agents and deny the Petition.

II

THE NINTH CIRCUIT PANEL DID NOT ERR IN ITS LEGAL ANALYSIS IN DETERMINING WHETHER ROBERTS WAS ENTITLED TO QUALIFIED IMMUNITY

Petitioners' "Argument For Allowance of Writ" (page 6) points out that the Ninth Circuit Panel "apparently did not locate any cases which address the narrow question whether Roberts could detain Hallstrom until she submitted to booking." Then they state that "the Panel looked to the law on the

broader issue of the right to be taken immediately before a magistrate."

This last statement is an admission that Petitioners knew and understood that Hallstrom had to be taken "immediately" before a magistrate. Notwithstanding that, the Panel need not find cases that allow detention "until she submitted to booking," as the Panel, in addressing that issue, answered that question as follows:

> "Hallstrom should not be foreclosed from presenting evidence that might establish liability under *Bell*. The defendants used detention as a means to 'coerce' compliance with booking procedures. The detention itself (and her lack of access to a magistrate or release on bail) could be punishment for failing to cooperate. Especially given the alternatives available (including booking over her objections, requesting a booking order, partial booking), six days' incarceration is 'excessive' in relation to its purpose. While the government has a legitimate interest in orderly booking, it does not command as high a priority, for example, as ensuring presence at trial or maintaining jail security. 'Effective management' might have been achieved by choosing not to confine Hallstrom (and releasing her on the citations or the bail set by the judge) or by employing the alternatives available to effectuate booking without detention." (Writ, App. 30-31)

In these arguments (Writ, p. 10), Petitioners attempt to accuse the Circuit Panel of over-generalizing the "clearly established law inquiry." They then try to particularize the issues to "Hallstrom's 'right' to not submit to the booking process verses Ada County's right to detain her until she did submit."

While Petitioners would have the court believe that the Circuit Panel "took it upon itself to frame the issue," this issue

was clearly found in the local District Court's Decision, but now Petitioners attempt to frame a different issue. Petitioners never even brought up any arguments on their alleged right to detain Hallstrom until she submitted to booking, until their request for rehearing before the 9th Circuit, which was denied. So, since this was never an issue before the Panel, the issue could not be considered and has no merit at this time.

Petitioners also attempt to mislead this court and put words in Mrs. Hallstrom's brief which do not exist in footnote 1 (Writ, p. 11) where Petitioners say that Hallstrom "acknowledged in her brief to the Ninth Circuit that her right to be taken before a magistrate was not even an issue to be decided." Hallstrom is mystified where Petitioners got such a statement, unless it was taken from her Brief where she quoted Kanekoa and Gerstein and stated:

> "The problem with Kanekoa and Gerstein is that it pertains to time elements from arrest until a magistrate conducts a probable cause hearing, which is not really relevant in this case as Mrs. Hallstrom has never questioned the timeliness of probable cause hearings." Brief of Appellants, p. 27, Hallstrom v. Garden City, et als, Ninth Circuit Court of Appeals, No. 91-35662

The reason for this statement was because in Idaho the law requires a person to be taken before a magistrate but the law does not address the reason for being taken before a magistrate (i.e. probable cause hearing, bail setting, arraignment, trial, etc.). In Idaho probable cause hearings are held ex parte between a magistrate and a prosecuting attorney and no arresting officers or defendants are present. The first time Hallstrom appeared before a magistrate was not for a probable cause hearing, but for bail setting and arraignment. So Hallstrom never appeared before a magistrate for a probable cause hearing and in this regard, being taken before a

magistrate in conjunction with a "probable cause hearing" was never an issue to be decided. Since Idaho Code does not specify the reason for being taken before a magistrate Hallstrom never argued the reason for that appearance. But being taken before a magistrate was an issue and Hallstrom argued that issue for over six pages in her brief.

Next Petitioners state that the Panel rejected a Ninth Circuit Panel's approach to the reasonableness issue in *Hunter,* quoting that case as follows: "...The court should ask whether the agents acted reasonably under settled law in the circumstances...." Then they state that the Panel never asked whether Roberts "acted reasonably under settled law in the circumstances." In addressing this very issue the Panel stated: "A two-part analysis is required: '(1) Was the law governing the official's conduct clearly established? (2) Under that law, could a reasonable officer have believed the conduct was lawful?'"

Then the court went on to show that the law was clearly established stating:

> "The law was clearly settled that Mrs. Hallstrom had a constitutional right to 'prompt' presentation to a judicial officer. We find that no 'objectively reasonable' official could consider the initial four-day period of incarceration 'brief,' or Mrs. Hallstrom's presentation to the state court judge 'prompt.'" (Writ, App. 25)

And finally, Petitioners allege that if the Panel had followed *Hunter,* "it would have found no law supporting Hallstrom's position that she had an inalienable right not to be booked,... no law clearly establishing that Hallstrom could not be detained until she booked,... and no law advising Roberts that he may be subjected to compensatory damages and punitive damages for requiring Hallstrom to be booked." (Writ, P. 12)

First, Hallstrom never claimed an inalienable right not to be booked, she claimed a right to have a court order or a warrant before she submitted to the booking process, so no law need be found on the subject.

Secondly, there is no law stating that Hallstrom could not be detained until she booked. Likewise there is no law stating that Hallstrom could not be detained until she submitted to rape. In addition, from Hallstrom's position, there is no law requiring that she subject herself to the booking process, therefore she demanded a court order or a warrant. Hallstrom would not pay a bill she did not believe she owed without a court order, and neither would she submit to booking without a court order.

And thirdly, there is no law telling Roberts that he may be liable for damages for requiring Hallstrom to be booked. It should be pointed out that damages are not being sought for "requiring Hallstrom to be booked" for she was willing to be booked upon presentation of a court order or a warrant. But damages were sought for unlawful imprisonment, for Roberts should know that only judges pass out life sentences, and he should likewise know that arbitrarily giving Hallstrom a life sentence because she refused to participate in the booking process without a court order, is a violation of her rights.

It could also be pointed out that there is no law telling Roberts that he may be liable for damages for making submission to rape a condition of Hallstrom's release either. But Roberts is well aware that he would be liable under such circumstances and he should be aware that he is liable for damages when he violates the rights of individuals. The sheriff (and Roberts) has the prosecuting attorney and a staff to assist him in knowing these things, but no, he will not find a specific law on the books for every possible violation of rights nor should he expect to find one.

Any reasonable person should know that any "incognito incarceration" smacks of Dark Age tactics. And, based on Idaho law alone, any reasonable officer should know that four days is not "a brief period," and when not complied with, the unlawfulness is clearly unreasonable. While it may be possible to excuse the average policeman under some circumstances, who may not be well trained in constitutional rights, there can be no excuse for people in authority such as the jail commander and the Sheriff who have a duty to know the law, and who have a legal advisor from the prosecuting attorney's office assigned to them on a full-time basis.

Petitioners quote *Harlow*, which also says "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate 'clearly established' statutory or constitutional rights of which a reasonable person would have known." *(emphasis added) Harlow,* 457 U.S. 800, 801

In *Harlow*, we also see that officials are not even shielded from liability for performing discretionary functions when those functions violate "clearly established statutory or constitutional rights." However, in this case we are not talking about "discretionary functions," we are, contrary to Petitioners' claims, talking about clearly established law of Idaho which is much narrower than the Federal standard. For Petitioners to claim immunity based upon a local Federal Court decision, and in so doing violate all state laws on the issue, is another double standard or perhaps one of convenience to allow them to disregard state law.

Harlow also says "'The greater power of...officials,' we reasoned, 'affords a greater potential for a regime of lawless conduct.' 438 U.S., at 506. Damages actions against high officials were therefore 'an important means of vindicating constitutional guarantees.' Ibid." (p. 809) Hallstrom contends

that this is exactly what is taking place in Idaho when these officials engage in "lawless conduct" by refusing to take arrestees before a magistrate or in lieu issue a citation (Idaho Code 49-1411; see also Idaho Code 19-514, 515, 615 and 49-1405(b), 1406, 1407, 1408, 1409, see Appendix). As the 9th Circuit Panel observed, the District Court is "simply wrong."

The Ninth Circuit Panel seemed to understand the qualified immunity issue when they stated: "A municipality (and its employees sued in their official capacities) may not assert a qualified immunity defense to liability under Section 1983." (citations omitted) Writ, App. 24

Therefore it follows that employees are barred from arguing qualified immunity. The same would be true for persons sued in their individual capacity but qualified immunity turns on "objective reasonableness." If there is no objective reasonableness then persons sued in their individual capacities are likewise barred from claiming "qualified immunity."

The Panel simply recognized this manifest injustice and applied a maxim of equity to the situation. They analyzed the facts and applied them to the jail commander and determined that there was no "objective reasonableness" and therefore the jail commander was barred from claiming such a defense, regardless of the ruling of the district court.

CONCLUSION

For these reasons this Petition for a Writ of Certiorari should be denied.

Respectfully submitted this 4th day of November, 1993.

Sue Hallstrom, Respondent
PO Box 9411
Boise, ID 83707

APPENDIX

IDAHO CODE 19-514

Defendant to be taken before a magistrate.--- If the offense charged is a felony, **the officer making the arrest must cause the defendant to be taken before the magistrate** who issued the warrant,...

If the offense charged is a misdemeanor, and the defendant is arrested in another county, **the officer must, upon the request of the defendant, take him before a magistrate** in that county, who may admit him to bail...On taking of said bail, the magistrate must certify that fact on the warrant, and deliver the warrant and the undertaking of bail to the officer in charge of the defendant. **The officer must then discharge the defendant from arrest**, and must without delay deliver the warrant and the undertaking to the court at which the defendant is required to appear.

If bail is not forthwith given by the defendant, the officer must cause the defendant to be taken before the magistrate who issued the warrant. (Emphasis added)

IDAHO CODE 19-515

No unnecessary delay -- Attorney may visit defendant. --- The defendant must **in all cases** be taken **before the magistrate without unnecessary delay**, and any attorney at law entitled to practice in the courts of record of the state of Idaho may, at the request of the prisoner after such arrest, visit the person so arrested. (Emphasis added)

IDAHO CODE 19-615

Procedure upon arrest without warrant. --- When an arrest is made without a warrant by a police officer or private person the person arrested must, **without unnecessary delay, be**

taken before the nearest or most accessible **magistrate** in the county in which the arrest was made, and an information, stating the charge against the person, must be laid before the magistrate. (Emphasis added)

IDAHO CODE 19-625

Detention for obtaining evidence of identifying physical characteristics. – (1) A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense which is a felony may make written application upon oath or affirmation to a judge of any district court, or magistrates division thereof, for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics....The order shall require the presence of the identified or particularly described individual at such time and place as the court shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the judicial officer upon a showing under oath of all the following:

(A) Probable cause for belief that a specifically described criminal offense which is a felony has been committed....

(2) Any order issued pursuant to the provisions of this section shall specify the following:

(A) The alleged criminal offense which is the subject of the application.

(B) The specific type of identifying physical characteristic evidence which is sought.

(C) The relevance of such evidence to the particular investigation.

(G) The time that such evidence shall be taken except that no person may be detained for a period of more than three (3) hours for the purpose of taking such evidence.

(H) That the individual so identified or described shall have the right to legal counsel during the detention....

IDAHO CODE 49-1405

(formerly 49-1109)

Arrests for serious offenses. -- (a) The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses:

1. Negligent homicide.

2. Driving, or being in actual physical control, of a vehicle while under the influence of intoxicating liquor.

3. Driving a vehicle while under the influence of any narcotic drug, or driving a vehicle while under the influence of any other drug to a degree which renders the person incapable of safely driving a vehicle.

4. Failure to stop, or failure to give information, or failure to render reasonable assistance, in the event of an accident resulting in death or personal injuries.

5. Failure to stop, or failure to give information, in the event of an accident resulting in damage to a vehicle or to fixtures or other property legally upon or adjacent to a highway.

6. Reckless driving.

7. Fleeing or attempting to elude a police officer.

(b) Whenever any person is arrested as authorized in this section, he shall be taken **without unnecessary delay** before the proper magistrate as specified in section 49-1115, Idaho Code, except that in the case of the offenses designated in paragraphs 5, 6 and 7, **a police officer** shall have the same discretion as is provided in other cases in section 49-1111, Idaho Code. (Emphasis added)

IDAHO CODE 49-1406

(formerly 49-1110)

When person must be taken **immediately before a magistrate**. -- Whenever any person is halted by **a police officer** for any violation of this title amounting to a mis-

magistrate, **he shall be taken without unnecessary delay before the proper magistrate** as specified in section 49-1115, Idaho Code. (Emphasis added)

IDAHO CODE 49-1407

(formerly 49-1111)

When **officer has option** to take person before a magistrate. -- Whenever any person is halted by **a police officer** for any misdemeanor violation of this title and is not required to be taken before a magistrate as hereinbefore provided, the person shall, in the discretion of the officer, either be given a traffic citation as hereinafter provided, or be **taken without unnecessary delay before the proper magistrate** as specified in section 49-1115, Idaho Code, in any of the following cases:

1. When the person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

2. When the person is charged with a violation of section 49-843, Idaho Code, relating to vehicles transporting explosives.

3. When the person is charged with a violation of sections relating to the refusal of a driver of a vehicle to submit such vehicle to an inspection and test.

4. When the person is charged with a violation of sections relating to the failure or refusal of a driver of a vehicle to submit the vehicle and load to a weighing or to remove excess weight therefrom. (Emphasis added)

IDAHO CODE 49-1408

(formerly 49-1112)

Arrest of nonresident. -- All of the provisions of this chapter apply both to residents and nonresidents of this state, except the special provisions in this section which shall govern mis-

demeanor violations in respect to nonresidents under the circumstances herein stated.

(b) **A police officer** at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a nonresident of this state and who is involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any misdemeanor offense under the provisions of this act in connection with the accident, and if the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

(c) Whenever any person is arrested under the provisions of this section, he shall be taken **without unnecessary delay** before the proper magistrate as specified in section 49-1115, Idaho Code. (Emphasis added)

IDAHO CODE 49-1409

(formerly 49-1113)

Issuance of traffic citation. -- Whenever a person is halted by a police officer for a misdemeanor traffic violation and is not taken before a magistrate as required or permitted by this chapter, the officer shall issue a citation as provided by section 19-3901, Idaho Code, and by rule of the supreme court.

IDAHO CODE 49-1411

(formerly 49-1115)

Appearance before magistrate -- Procedure. -- A person shall be **taken before a magistrate** or given a traffic citation, and the charge thereafter processed as provided by rule of the supreme court. (Emphasis added)